No. 6406

United States

Circuit Court of Appeals

For the Ninth Circuit.

PAUL HERRMANN,

Appellant,

vs.

NEW YORK LIFE INSURANCE COMPANY,
a Corporation,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the District of Oregon.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

Mr. E. B. SEABROOK, Concord Building, Portland, Oregon, and Mr. C. T. HAAS, Pacific Building, Portland, Oregon,
For the Appellant.

HUNTINGTON, WILSON & HUNTINGTON, Porter Building, Portland, Oregon, and CLARK & CLARK, Yeon Building, Portland, Oregon,
For the Appellee.

In the District Court of the United States for the District of Oregon.

No. L.–10,535.

PAUL HERRMANN,
Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY, a Corporation,
Defendant.

CITATION ON APPEAL.

United States of America,
State and District of Oregon,
County of Multnomah,—ss.

To the New York Life Insurance Company, a Corporation, Defendant, Above Named, and to Messrs. Clark and Clark, and to Huntington, Wilson & Huntington, Your Attorneys Herein, GREETING:

WHEREAS the plaintiff above named has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment rendered in the District Court of the United States for the District of Oregon, in your favor, on December 1, 1930, and has given the security required by law,

YOU ARE THEREFORE HEREBY CITED AND ADMONISHED to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said judgment should not be reversed or corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 6th day of February, in the year of our Lord one thousand nine hundred and thirty-one.

JOHN H. McNARY,
Judge.

United States of America,
State and District of Oregon,
County of Multnomah,—ss.

Due and timely the legal service by copy of the within and foregoing citation on appeal is hereby admitted at Portland, Oregon, this 6th day of February, 1931.

CLARK & CLARK,
Attorneys for Defendant Above Named.

[Endorsed]: Filed Feb. 6, 1931. [1*]

In the District Court of the United States for the District of Oregon.

November Term, 1928.

BE IT REMEMBERED, that on the 4th day of February, 1929, there was duly filed in the District Court of the United States for the District of Oregon, a transcript of record on removal from the Circuit Court of the State of Oregon for Multnomah County, the Petition for Removal, Order for Removal, and Certificate of the Clerk, contained therein, being in words and figures as follows, to wit: [2]

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*Page-number appearing at the foot of page of original certified Transcript of Record.

In the Circuit Court of the State of Oregon, for Multnomah County.

No. N.–1529.

PAUL HERRMANN,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY, a Corporation,

Defendant.

PETITION FOR REMOVAL.

To the Honorable Circuit Court of the State of Oregon for Multnomah County:

Your petitioner, New York Life Insurance Company, a corporation, the above-named defendant, respectfully shows to this Honorable Court:

I.

That this is an action at law brought by said plaintiff against this defendant to recover upwards of $22,000.00, exclusive of interest and costs and that the matter in dispute and the amount in controversy exceeds the sum of $3,000.00, exclusive of interest and costs. That there is a controversy between the parties to this action, defendant controverting and denying each and every part of the cause of action set up in the complaint in said action, and said action was duly filed and commenced and is now pending in this court; that this cause is one of a civil nature, of which the District

Courts of the United States have original jurisdiction.

II.

At the time of the commencement of this action your petitioner, the above-named defendant, was and still is a corporation, duly organized and existing under and by virtue of the laws of the State of New York and a citizen and resident of said state. At the time of the commencement of this action the plaintiff was and still is a citizen, subject and resident of the Republic of Germany and a nonresident of the State of Oregon. [3]

III.

That the time within which the defendant is required to answer by the laws of Oregon has not yet expired, service of summons herein having been made upon the defendant in Multnomah County, Oregon, on the 26th day of December, 1928.

IV.

Your petitioner herewith offers a good and sufficient bond and surety for its entering in the District Court of the United States for the District of Oregon, within thirty days from the date of the filing of this petition, a certified copy of the record in this action and for paying all costs and disbursements that may be awarded by said District Court of the United States if said court shall hold that this action was wrongfully or improperly removed.

WHEREFORE, your petitioner prays that this Honorable Court proceed no further herein except

to make the proper and usual order of removal, as required by law, and to accept the said bond and surety and cause the record herein and this action to be removed to the District Court of the United States for the District of Oregon.

NEW YORK LIFE INSURANCE COMPANY.

By R. A. DURHAM,
Its Attorney-in-fact for Oregon,
Petitioner.

CLARK & CLARK,
HUNTINGTON, WILSON, HUNTINGTON,
Attorneys for Petitioners. [4]

State of Oregon,
County of Multnomah,—ss.

R. A. Durham, being first duly sworn, deposes and says: That I am the attorney-in-fact for Oregon for the above-named petitioner; that the foregoing petition is true, to my own knowledge, except as to matters therein stated on information and belief and as to those matters I believe it to be true.

R. A. DURHAM.

Subscribed and sworn to before me this 3d day of January, 1929.

[Notarial Seal]

WALTER M. HUNTINGTON,
Notary Public for Oregon.

My commission expires Mar. 4, 1932.

State of Oregon,
County of Multnomah,—ss.

On this 3d day of January, 1929, in said county and state, before me, a notary public within and for said county and state personally appeared R. A. Durham, to me well known to be the individual who executed the foregoing petition for and in behalf of the said defendant and acknowledged to me that he executed the same.

[Notarial Seal]

WALTER M. HUNTINGTON,
Notary Public for Oregon.

My commission expires March 4, 1932.

Due and legal service of the foregoing petition for removal upon me at Portland, Oregon, this 3d day of January, 1929, is hereby acknowledged.

PETER A. SCHWABE,
Of Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 5, 1929. [5]

BE IT REMEMBERED, that at a regular term of the Circuit Court of the State of Oregon, for the county of Multnomah, begun and held at the county courthouse in the city of Portland, in said county and state on Monday, the 3d day of December, A. D. 1928, the same being the first Monday in said month, at the time fixed by law for holding a regular term of said court. Present, Hons. JACOB KANZLER, ROBERT G. MORROW, ROBERT TUCKER,

JOHN H. STEVENSON, LOUIS P. HEWITT, WALTER H. EVANS, GEORGE TAZWELL and W. A. EKWALL, Judges.

Whereupon, on this Saturday, the 5th day of January, A. D. 1929, the same being the 28th judicial day of said term of said court, among other proceedings the following was had to wit:

[Title of Court and Cause—Cause No. N.–1529.]

ORDER FOR REMOVAL.

(Jan. 5, 1929.)

This defendant having presented to this Court a sufficient petition for removal of this cause to the District Court of the United States for the District of Oregon and a bond with sufficient surety upon removal;

And it appearing that the plaintiff has been given due and timely notice of the time and place for a hearing upon said petition,—

IT IS ORDERED that said petition is sufficient in [6] substance and form and is hereby allowed, that the bond for removal is accepted and approved, and this Court proceed no further in this cause and that it be and is hereby removed to the District Court of the United States for the District of Oregon.

Dated this 5th day of January, 1929.

JACOB KANZLER,
Judge. [7]

State of Oregon,
County of Multnomah,—ss.

I, A. A. Bailey, County Clerk and *Ex-officio* Clerk of the Circuit Court of the State of Oregon in and for the county of Multnomah, do hereby certify that the foregoing copy of complaint, summons and return of service, notice of Removal and proof of service, bond on removal and proof of service, and order of removal, constitute all the records and proceedings had in a cause entitled Paul Herrmann, Plaintiff, vs. New York Life Insurance Company, a Corporation, Defendant, have been by me compared with the originals and that they are true and correct transcripts therefrom and from the whole of such originals as the same appear of record and on file in my office and in my care and custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court this 10th day of January, A. D. 1929.

[Seal of Court] A. A. BAILEY,
County Clerk.
By C. S. Stowe,
Deputy.

Transcript of Record. Filed February 4, 1929.
[8]

AND AFTERWARDS, to wit, on the 19th day of May, 1930, there was duly filed in said court a second amended complaint, in words and figures as follows, to wit: [9]

In the District Court of the United States, for the District of Oregon.

No. L.–10,535.

PAUL HERRMANN,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY, a Corporation,

Defendant.

SECOND AMENDED COMPLAINT.

Comes now the plaintiff and for his second amended complaint and for cause of action against defendant, alleges the following facts:

I.

That at all times hereinafter mentioned, the defendant, New York Life Insurance Company, was and now is a mutual life insurance corporation organized and existing under and by virtue of the laws of the State of New York and doing business in the State of Oregon as a foreign corporation in compliance with the laws of the State of Oregon.

That the business of the defendant corporation, among other things, is and was during all times

herein mentioned the authorized issuance of life insurance and endowment policies upon the mutual insurance plan in the State of Oregon, the United States, the former Empire of Germany, now the Republic of Germany, and in other countries.

II.

That on or about February 25th, 1905, upon the application of one Ludwig Schnell, hereinafter called the insured, to the defendant corporation and in consideration of the payment by the said insured of annual premium of 522 marks, legal tender of Germany, and in further consideration of a similar premium to be paid annually on or before December 31st of each succeeding year during the continuance of the policy, for a stated period of twenty (20) years, the defendant made, executed, sealed and delivered to said insured its policy of life insurance and endowment contract numbered 1554478, substantially in form and tenor as in Exhibit "A" attached to the answer of defendant on file herein.

III.

In said policy of insurance it is provided, among other things as follows:

> "If however, the insured survives the maturity of the insurance, that is the 31st day of December Nineteen Hundred and Twenty-Four, [10] the amount of 9000 Marks Deutsche Reischswahrung will be paid to the insured or his legal successors and this policy at the same time will cease and determine."

"The present policy is issued, as specified on the first page, with annual participation in the profits of the Company. The said profits are distributed on the anniversary of the policy and may

A. Be withdrawn in cash; or,

B. Be applied to increase the original amount of insurance."

Said policy also contains provisions providing for the ascertainment, calculation and distribution of the profits of the Company to the holder of said policy wherein all the earnings of the company from business wherever transacted and all profit participating policies wherever issued and wherever the holders thereof reside and wherever the same are payable, are considered and figured into the calculation.

IV.

Prior to December 31, 1924, plaintiff's assignor said Ludwig Schnell, duly performed all and singular the conditions precedent on his part to be done and performed and on December 31, 1924, was alive and is now alive.

V.

Prior to February 7, 1923, said insured had elected to withdraw the profits distributed on said policy in cash and have them applied in payment of the premiums due on said policy, and all profits accrued and payable prior to February 7, 1923, were paid. But neither the profits of defendant for the year 1922, payable February 7, 1923, nor the profits for the year 1923, payable February 7,

1924, nor the profits for the year 1924, payable February 7, 1925, were ever ascertained, calculated or distributed or paid. And on or about February 8, 1925, said Ludwig Schnell demanded of defendant that it pay said endowment of 9,000 marks, and ascertain and distribute the profits for the years 1922, 1923, and 1924, but defendant then refused and ever since has refused to do so; and defendant then repudiated said insurance and endowment policy and contract and stated that it was not liable thereunder and that it would not be bound by or perform the same or any part thereof; and [11] defendant never has paid any part of said endowment fund nor the profits for the years 1922, 1923 and 1924.

VI.

During the years of 1922, 1923 and 1924 defendant was engaged in its said business not only in Germany, but also in other countries of the world and in the United States of America and earned large profits, a part of which pursuant to the terms of said policy were to be allotted and distributed to the insured, which profits were earned and accumulated in American dollars, and invested in American dollars and have always been kept and calculated and accounted in books of accounts and records written in the English language and kept in the city of New York, State of New York, in the United States of America, and have always been so kept, recorded, calculated and accounted in the terms and values or American dollars. A large part of said profits have been and are now

kept by defendant in American dollars in the States of New York and of Oregon.

VII.

Plaintiff alleges that the distributive share of said insured in the profits of the defendant for the year 1922 would have been, if defendant had performed its contract, the sum of $74.90, and for the year 1923, would have been the sum of $83.50, and for the year 1924 would have been the sum of $95.40, no part of which has been paid.

VIII.

The exchange value of one German mark, legal tender of Germany the medium of payment of the endowment fund specified in said policy, on December 31, 1924, and at all times thereafter was the sum of Twenty-three and Eighty-five Hundredths Cents ($0.2385).

IX.

The amount of the death benefit and the endowment fund specified in said policy and the premium fixed by said policy were carried at all times on the books and in the accounts of defendant in the city of New York, State of New York, in the United States of America, in American dollars at the exchange rate of one mark, legal tender of Germany, being equal and equivalent in value to Twenty-three and Eighty-five One Hundredths Cents ($0.2385). [12]

X.

By reason of the facts aforesaid and the repudiation of said policy of insurance and endowment contract by defendant and its failure to pay said

endowment fund and said profits said insured and this plaintiff have been and are damaged in full sum of $2,146.50, and the further sum of $74.90, and the further sum of $83.50 and the further sum of $95.40, together with interest thereon at the rate of 6% per annum from the date of filing this complaint, no part of which has been paid.

XI.

After February 8, 1925, and after the said repudiation of said policy by defendant, aforesaid, and prior to the commencement of this action, said insured for a valuable consideration assigned and transferred to plaintiff all his rights and interest in and to said policy of insurance and said endowment fund and said profits, and also all his rights to and demands for damages by reason of defendants said repudiation of said policy and its refusal to pay said endowment fund and to distribute and pay said profits, and plaintiff is now the owner and holder thereof.

XII.

By reason of the facts aforesaid plaintiff has been damaged specially in the further sum of $350.00 which sum plaintiff alleges is a reasonable sum to be allowed as attorney's fees in this action, for the payment of which to his attorney appearing in this action plaintiff has necessarily and because of defendant's said wrongful acts incurred a liability.

And for a second further and separate cause of action against the defendant, plaintiff complains and alleges as follows:

I.

That at all times hereinafter mentioned, the defendant, New York Life Insurance Company, was and now is a mutual life insurance corporation organized and existing under and by virtue of the laws of the State of New York and doing business in the State of Oregon as a foreign corporation in compliance with the laws of the State of Oregon.

That the business of the defendant corporation, among other things, is and was during all times herein mentioned the authorized issuance of life insurance and endowment policies upon the mutual insurance plan [13] in the State of Oregon, the United States, the former Empire of Germany, now the Republic of Germany, and in other countries.

II.

That on or about July 12th, 1902, upon the application of one Martin Loeb, hereinafter called the insured, to the defendant corporation and in consideration of the payment by the said insured of an annual premium of 1,074.60 marks, legal tender of Germany, and in further consideration of a similar premium to be paid annually on or before July 12, of each succeeding year during the continuance of the policy, for a stated period of twenty (20) years, the defendant made, executed and sealed and delivered to said insured its policy of life insurance and endowment contract numbered 1501182, a substantial copy of which is attached to the answer and marked Exhibit "C."

III.

That in and by said policy and contract it is provided as follows:

"Or, should the insured still be living at the expiration of the insurance period, namely on July 12, 1922, the amount of M.20000 Deutsche Reischswahrung will then be paid to the insured, or his legal representative and, at the same time, the policy shall cease and determine."

"The present policy is issued with accumulation of profits during the period of 20 years, ending with the 12th day of July, 1922, should the insured be alive at noon of said day and all premiums have been paid in full, this Company will allot to the insured or his legal successor, the profits and this policy, also grants the right to choose from the following four methods of settlement:

"(1) in cash, or

"(2) in the shape of a life annuity, or

"(3) in the shape of a paid-up policy, not participating in the profits and only payable at the death of the insured. In this case the insured, in order to enjoy this advantage must prove to the Company successfully that he can satisfy all of the conditions necessary for such insurance.

The Company guarantees that the total cash surrender value of this policy at the end of the accumulation of profits period shall not be less than Mk. 20,000. The total cash surrender value includes outside of the guaranteed minimum amount, also such profits as the Company [14] allots at that time for said policy.

"If this policy is in force at the end of the accumulation period, the Company will notify the insured, or his legal successor of the results of each of the above-mentioned methods of payment. Until the expiration of the accumulation period no profits are allotable or allowable and this company shall not be obligated to impart any information of any kind and nature regarding the profit-accumulation before said period."

IV.

Prior to July 12, 1922, the said insured duly performed all and singular the conditions precedent on his part to be done and performed, and on July 12, 1922, he was alive and still is alive.

V.

Neither on July 12, 1922, nor at any time thereafter did the defendant give to plaintiff any information whatever as to the results of a settlement upon either of the methods mentioned and referred to in said policy, or as to the amount of accumulated profits to be allotted to this policy, although plaintiff duly demanded such information, but instead defendant denied to plaintiff that it was liable on said policy, and repudiated all liability therein and informed plaintiff that it absolutely would not perform any of the covenants or provisions thereof. No part of said endowment fund has ever been paid.

VI.

During the 20 years between the issuance of said policy and July 12, 1922, defendant was engaged in its said business, not only in Germany, but also

in England, Australia, Italy, Norway, Sweden, Canada and the United States of America as well as elsewhere and had earned large profits, a portion of which were to be allotted to plaintiff's said policy as required by said policy, and said profits were earned and accumulated in American dollars, and invested in American dollars and have always been kept and calculated and accounted in books of account and records written in the English language and kept in the city of New York, State of New York, in the United States of America, and have always been kept, recorded, calculated and accounted in the terms and values of [15] American dollars, of which profits, so earned and accumulated, plaintiff became, by virtue of his said policy entitled to his allotted share. A large part of said profits have been and are now kept in American dollars in the States of New York and of Oregon.

VII.

The share of said profits, so earned and accumulated, which by the terms of said policy were earned by and to be allotted and paid to plaintiff as the holder of said policy, amounts to and is the full sum of $2,385.00, no part of which has been paid.

VIII.

Plaintiff was unable to obtain from defendant the information concerning the amount of said profits so as to make his election as to which of said methods of settlement he would choose, and defendant refused to give said information and denied

its liability so to do. Plaintiff therefore sought and obtained said information for himself receiving said information at the time of and immediately prior to the filing of his complaint herein, and plaintiff alleges that the time between July 12, 1922, and the date of the filing of the complaint herein was a reasonable time within which plaintiff in the exercise of due diligence should obtain the said information and make his election as to the method of settlement. At the time of and immediately prior to the *filing the* complaint herein plaintiff elected to take settlement in cash and in and by said complaint he demanded payment and settlement in cash, and he does hereby demand the same and plaintiff does hereby tender to defendant a surrender of his said policy of insurance.

IX.

The exchange value of one German mark, legal tender of Germany, the medium of payment of the insurance fund specified in said policy, on July 12, 1922, was the sum of Twenty-three and Eighty-five Hundredths Cents ($0.2385).

X.

The amount insured by said policy and the premium fixed by said policy were carried on the books and in the accounts of defendant in the city of New York, State of New York in the United States of America, [16] in American dollars at the rate of the mark, legal tender of Germany, *to* Twenty-three and Eighty-five Hundredths Cents ($0.2385).

XI.

That the exchange value of the mark, legal tender of Germany, at the time of the commencement of this action was, ever since has been and now is the sum of Twenty-three and Eighty-five Hundredths Cents ($0.2385).

XII.

By reason of the facts aforesaid and the repudiation of said policy of insurance and endowment contract by defendant and its failure to pay said endowment fund and said profits said insured and this plaintiff have been and are damaged in the full sum of $7,155.00, together with interest thereon at the rate of 6% per annum from the date of filing this complaint, no part of which has been paid.

XIII.

After July 12, 1922, and after the said repudiation of said policy by defendant, aforesaid, and prior to the commencement of this action, said insured for a valuable consideration assigned and transferred to plaintiff all his rights and interest in and to said policy of insurance and said endowment fund and said profits, and also all his rights to and demands for damages by reason of defendant's said repudiation of said policy and its refusal to pay said endowment fund and to distribute and pay said profits, and plaintiff is now the owner and holder thereof.

XIV.

By reason of the facts aforesaid plaintiff has been damaged specially in the further sum of $700.00

which sum plaintiff alleges is a reasonable sum to be allowed as attorney's fees in this action, for the payment of which to his attorney appearing in this action plaintiff has necessarily and because of defendant's said wrongful acts incurred a liability.

And for a third further and separate cause of action against defendant, plaintiff complains and alleges: [17]

I.

That at all times hereinafter mentioned, the defendant, New York Life Insurance Company, was and now is a mutual life insurance corporation organized and existing under and by virtue of the laws of the State of New York and doing business in the State of Oregon as a foreign corporation in compliance with the laws of the State of Oregon.

That the business of defendant corporation, among other things is and was during all times herein mentioned the authorized issuance of life insurance and endowment policies upon the mutual insurance plan in the State of Oregon, the United States, the former Empire of Germany, now the Republic of Germany, and in other countries.

II.

That on or about September 24th, 1902, upon the application of one Hermann Kaiser-Bluth, hereinafter called the insured, to the defendant corporation and in consideration of the payment by the said insured of an annual premium of 1,524.30

marks, legal tender of Germany, and in further consideration of a similar premium to be paid annually on or before September 24th, of each succeeding year during the continuance of the policy, for a stated period of twenty (20) years, the defendant made, executed, sealed and delivered to said insured its policy of life insurance and endowment contract numbered 1505347; a substantial copy of the first two pages of said policy is attached to the answer and marked Exhibit "D." The remainder of said policy is substantially the same as pages 3 to 7 inclusive of Exhibit "A" attached to said answer, except as to amount of insurance, dates and names of parties and except that on the first page of said policy the provision commencing with the words "If, however" and ending with the words "cease and determine" is as alleged in Paragraph III hereof, and not as set out in said Exhibit "D."

III.

In said policy of insurance it is provided, among other things as follows:

"If, however, the insured survives the maturity of the insurance, that is the 24th of September, 1922, the amount of 30,000 Marks D. Rwg. will be paid to Mrs. Marie Kaiser Bluth, nee Heinfeld, wife of the insured and in case of her said death then to the insured's legal [18] representatives, and this policy at the same time will cease and determine."

Said policy also contains provisions providing for the ascertainment, calculation and distribution

of the profits of the Company to the holder of said policy wherein all the earnings of the company from business wherever transacted and all profit participating policies wherever issued and wherever the holders thereof reside and wherever the same are payable, are considered and figured into the calculation.

IV.

Prior to September 24, 1921, plaintiff's assignors, the said Herman Kaiser Bluth and the said Marie Kaiser Bluth, duly performed all and singular the conditions precedent on their parts to be done and performed and on September 24, 1921, they and each of them failed to pay the premium then falling due and the same has never been paid. And neither said Herman Kaiser Bluth nor said Marie Kaiser Bluth have at any time notified defendant of a choice under Paragraph VII of the conditions of said policy hereinafter mentioned.

V.

In and by paragraph VII of the conditions of said policy it is provided as follows:

"If at the time of lapse the policy has been in force not less than three full years, the same may:

(A) be converted, by endorsement, into a paid-up policy for a reduced amount of insurance, as stated in the following table; or,

(B) be purchased by the Company for cash for a sum, the amount of which is likewise stated in the following table.

In either case the insured must, within six months following the due date of the unpaid pre-

mium, notify the Company in writing of his choice and return the policy. If the policy has not been reduced or surrendered for its cash value as stated above:

(C) the insurance will automatically be extended for the amount of Marks 30000 D. Rwg. for the period set forth in the table below, counting from the day to which the premium has been paid in conformity with the contract. The insurance terminates at the end of the said [19] period; if, however, the insured is then still living the amount set forth in paragraph 'insurance extension' will be paid in cash.

The paid-up insurance for a reduced amount and the extended insurance, as specified above, are subject to the conditions of the present policy, however without payment of premiums, without rights to loans, and without participation in the profits, as specified in Article X following.

If at the time of the non-payment of a premium there is any indebtedness to the Company under the policy, such indebtedness (should the insured wish to avail himself of the above provisions of reduction, or of the extended insurance) must be repaid to the Company within 30 days following the due date of the said unpaid premium. If such indebtedness has not been repaid, the Company shall consider the policy as automatically lapsed and no longer in force by paying to the insured the cash surrender value, mentioned in this Article under 'B,' after deduction of all sums due as to principal, interest and expenses. In this latter

case the unpaid premium is not considered an indebtedness to the Company."

VI.

The period set forth in the table attached to said policy for extended insurance at the expiration of 19 years is two (2) years, and the amount set forth paragraph "insurance extension" attached to said policy is 25,500 marks.

VII.

On September 24, 1923, the said Herman Kaiser Bluth and the said Marie Kaiser Bluth were alive and they still are alive.

VIII.

On or about January 1, 1924, the said Herman Kaiser Bluth and the said Marie Kaiser Bluth demanded of defendant the payment of said 25,-500 marks pursuant to the provisions of said policy, but defendant refused then to pay any part thereof and repudiated said policy and disclaimed any and all liability thereon or thereunder and stated that it was not bound thereby and that it would not perform any of the covenants thereof, and defendant has never paid any part of said sum or delivered any part of said 25,500 marks. [20]

IX.

The exchange value of one German mark, legal tender of Germany, the medium of payment of said endowment fund specified in said policy, with money of the United States of America, was on

September 24, 1923, and at all times thereafter and is now the sum of Twenty-three and Eighty-five Hundredths Cents ($0.2385).

X.

By reason of the facts aforesaid and the repudiation of said policy of insurance and endowment contract by defendant and its failure to pay said endowment fund said insured Herman Kaiser Bluth and said beneficiary Marie Kaiser Bluth and this plaintiff have been and are damaged in the full sum of $6,081.75, together with interest thereon at the rate of 6% per annum from the date of filing this complaint, no part of which has been paid.

XI.

After January 1, 1924, and after said repudiation of said policy by defendant, aforesaid, and prior to the commencement of this action, said Herman Kaiser Bluth and said Marie Kaiser Bluth, for a valuable consideration, assigned and transferred to plaintiff all their rights and interests in and to said policy of insurance and said endowment fund and also all their rights to and demands for damages by reason of defendant's said repudiation of said policy and its refusal and failure to pay said endowment fund, and plaintiff is now the owner and holder thereof.

XII.

By reason of the facts, aforesaid, plaintiff has been and is damaged specially in the further sum of $600.00 which plaintiff alleges is a reasonable

sum to be allowed as attorney's fees in this action, for the payment of which to his attorney appearing in this action plaintiff has necessarily and because of defendant's said wrongful acts incurred a liability.

And for a fourth further and separate cause of action against defendant plaintiff complains and alleges as follows: [21]

I.

That at all times hereinafter mentioned, the defendant, New York Life Insurance Company, was and now is a mutual life insurance corporation organized and existing under and by virtue of the laws of the State of New York and doing business in the State of Oregon as a foreign corporation in compliance with the laws of the State of Oregon.

That the business of the defendant corporation, among other things, is and was during all times herein mentioned the authorized issuance of life insurance and endowment policies upon the mutual insurance plan in the State of Oregon, the United States, the former Empire of Germany, now the Republic of Germany, and in other countries.

II.

That on or about December 7th, 1903, upon the application of one Wilhelm Stadelmeyer, hereinafter called the insured, to the defendant corporation and in consideration of the payment by the said insured of an annual premium of 413.10 marks, legal tender of Germany, and in further consideration of a similar premium to be paid annually on

or before December 7th of each succeeding year during the continuance of the policy, for a stated period of twenty (20) years, the defendant made, executed, sealed and delivered to said insured its policy of life insurance and endowment contract numbered 2508291, a substantial copy of which is attached to the answer and marked Exhibit "E."

III.

That the said insured herein duly performed all the conditions of said policy by him to be performed up to and including the premium payable in 1904 and duly paid to the defendant the annual premiums each year and performed each and every condition or covenant to be performed by him.

IV.

That by said policy the defendant agreed, in consideration of the payment of the original and of subsequent annual premiums as aforesaid, to insure the life of the said insured in the sum of 10,000 marks, legal tender of Germany, beginning with noon, December 7th, 1903. That said policy further provided that after said policy was in full force one full year, annual premiums had been paid, a certain fixed cash [22] value attached thereto in favor of the insured, for a certain amount of fixed insurance without the payment of any additional premiums whatsoever. Said amount to be paid at the expiration date of the policy, December 7th, 1928. This amount of premium free insurance at the said date in December, 1904, amounted to 600 marks, legal tender of Germany.

That the option given to the insured to exercise his right to have said premium free insurance was properly exercised and as a result the defendant company converted the policy heretofore issued to him to a premium free insurance in the sum of 600 marks, legal tender of Germany, payable to said insured if alive on December 7th, 1928; in case of death to his beneficiary as named. Proper endorsement of said conversion of insurance to premium free insurance in said sum of 600 marks, legal tender of Germany, was entered on the records of the company and proper notation thereof made upon the policy issued to the insured herein, said policy being policy number 2508291. That in accordance with the terms of said policy, there was therefore due and payable by the defendant to the insured the sum of 600 marks, legal tender of Germany, which said payment was due on December 7th, 1928, and which said sum has heretofore been demanded and plaintiff herewith offers the surrender of said policy to the defendant as against such payment.

V.

That there was no debt to the defendant outstanding on said policy on its maturity date, nor has any debt been incurred thereon since that date. That said insured is still alive.

VI.

That the insured has heretofere and subsequent to December 7, 1928, demanded of defendant payment of the amounts due under and by virtue of

said policy, but the defendant at that time and at all times since said date has refused such payment.

VII.

That after December 7, 1928, and after said demand and refusal and prior to the institution of this action, all right, title and interest in and to said policy and all rights arising from, in and to the same and the right of insured to damages for breach of said contract [23] were for a valuable consideration assigned to Paul Herrmann, plaintiff herein by the said insured and that the said plaintiff is now the legal and equitable owner thereof and that due and proper notice of said assignment has been given to the defendant herein.

VIII.

By reason of the facts aforesaid plaintiff was damaged in the full sum of $143.00, no part of which has been paid.

IX.

That the exchange value of one German mark, legal tender of Germany, the medium of exchange specified in said policy was at all times herein mentioned and now is not less than Twenty-three and Eighty-five Hundredths Cents ($0.2385.).

X.

And by reason of the said facts aforesaid plaintiff has suffered special damages in the sum of $100.00, which sum plaintiff alleges is a reasonable sum to be allowed as attorney's fees in this action, and for the payment of which to his attorneys appearing in this action plaintiff has necessarily and

because of defendant's said wrongful acts incurred a liability.

WHEREFORE *defendant* demands judgment against defendant for the sum of $2,146.50 and $74.90 and $83.50 and $95.40, with interest thereon at the rate of 6% per annum from the date of filing the complaint herein, and the further sum of $350.00; and for the further sum of $7,155.00 with interest thereon at the rate of 6% per annum from the date of filing the complaint herein, and the further sum of $700.00; and for the further sum of $6,081.75 with interest thereon at the rate of 6% per annum from the date of filing the complaint herein, and the further sum of $600.00; and for the further sum of $143.00 with interest thereon at the rate of 6% per annum from the date of filing the complaint herein, and the further sum of $100.00, and for the costs and disbursements of this action.

C. T. HAAS,
Attorney for Plaintiff. [24]

State of Oregon,
County of Multnomah,—ss.

I, C. T. Haas, being first duly sworn, depose and say that I am the attorney for the plaintiff in the above-entitled action and that the foregoing amended complaint is true as I verily believe. I make this verification by reason of the fact that the plaintiff is not a resident of Multnomah County, or the State of Oregon, and that the within action is based upon documents in my possession.

C. T. HAAS.

Subscribed and sworn to before me this 16th day of May, 1930.

[Seal] IDA BELLE TREMAYNE,
Notary Public for Oregon.

My commission expires 7/10/32.

State of Oregon,
County of Multnomah,—ss.

Due service of the within second amended complaint is hereby accepted in Multnomah County, Oregon, this 17th day of May, 1930, by receiving a copy thereof, duly certified to as such by C. Y. Haas of attorneys for plaintiff.

B. S. HUNTINGTON,
Attorney for Defendant.

Filed May 19, 1930. [25]

AND AFTERWARDS, to wit, on the 24th day of April, 1930, there was duly filed in said court an answer to amended complaint, in words and figures as follows, to wit: [26]

[Title of Court and Cause—Cause No. L.–10,535.]

ANSWER TO AMENDED COMPLAINT.

Comes now the defendant, and answering the first cause of action contained in the amended complaint of the plaintiff herein:

I.

Admits that at all times mentioned in the amended complaint the defendant was, and now is,

a corporation organized and existing under and by virtue of the laws of the State of New York, and that it is now doing business in the State of Oregon as a foreign insurance company in compliance with the laws of the State of Oregon relating thereto. Admits that the business of the defendant, among other things, during all of said times was and now is the entering into and issuance of life insurance policies. Admits that for some years prior to August 1, 1914, it was authorized to and did issue policies of insurance in the German Empire and in other foreign countries. Denies that defendant at any time was and now is authorized to or did issue life insurance policies in the State of Oregon or in any part of the United States other than the State of New York. Denies that defendant has issued any policies of life insurance in the Empire of Germany, or its successor, the Republic of Germany, since August 1, 1914. (1) [27] Denies each and every other allegation contained in Paragraph I of said first cause of action.

II.

Admits that on or about the 7th day of February, 1905, on the application of Ludwig Schnell, and in consideration of the annual premium of 522.90 marks D. Rwg., or Deutsches Reichswehrung mark, which translated into English means marks in the currency of the German Empire, the defendant executed, issued and delivered to the said Schnell, in Germany, its policy No. 1554478. Said policy was written in the German language, payable in the German currency, and by the terms thereof

all payments to be made under or pursuant to said policy were to be made in Germany. In this connection the defendant further alleges that in the said application for the policy the said Schnell gave his place of birth as Strehlen, Germany, and his address and place of residence as Breslau, Germany, which is the present address and place of residence of said Schnell, as defendant is informed and believes, and therefore avers the fact to be. An accurate English translation of said policy is hereto attached, marked Exhibit "A," and hereby made a part of this answer. Denies each and every other allegation contained in Paragraph II of said first cause of action.

III.

Answering Paragraph III of said first cause of action, the defendant avers that a true English translation of said policy of insurance is attached hereto as aforesaid, and reference is made thereto for a full and particular statement of all the terms and conditions of the policy. Denies the remaining allegations contained in said Paragraph III.

IV.

Denies the allegations contained in Paragraph IV of (2) [28] said first cause of action.

V.

Answering Paragraph V, this defendant avers that some time prior to September 6, 1921, the said Schnell borrowed a sum of money from the defendant upon the aforesaid policy of insurance. Thereafter, and on or about December 31, 1921, the defendant assigned and transferred certain of its

business, policies and assets to Kronos Deutsche Lebenversicherungs Aktiengesellschaft, a corporation duly organized and existing under and by virtue of the laws of Germany, hereinafter called Kronos. Included in said transfer was the aforesaid policy issued to Schnell, and Kronos assumed all obligation and liability thereunder, and agreed to and did release the defendant from further liability thereunder; and in consideration of said premises and other considerations the said Schnell released and discharged defendant from all liability under the said policy and agreed to look solely to the said Kronos for the performance thereof, and thereupon dealt with the Kronos with respect to the said loan. In this connection the defendant is informed and avers the fact to be that some time after September 1, 1922, the exact date being unknown to the defendant, the said Schnell paid to Kronos the amount of the loan outstanding against the said policy. The defendant has not any knowledge or information as to whether any loan has been made upon or debt contracted against the security of said policy since December 31, 1921, or as to whether there is any debt outstanding against the same at this time. Denies the remaining allegations contained in said Paragraph V.

VI.

Answering Paragraph VI of said first cause of action, the defendant has not any knowledge or information sufficient (3) [29] to form a belief as to whether the insured was alive on December 31, 1924, or is now alive, and therefore denies the same.

Denies each and every other allegation contained in said Paragraph VI.

VII.

Denies the allegations contained in Paragraph VII of said first cause of action.

VIII.

Denies the allegations contained in Paragraph VIII of said first cause of action.

IX.

Denies the allegations contained in Paragraph IX of said first cause of action.

X.

Denies the allegations contained in Paragraph X of said first cause of action, and in this connection the defendant denies that the plaintiff has suffered damages in the sum of $3,328.00, or any other sum whatsoever.

XI.

Denies the allegations contained in Paragraph XI of said first cause of action, and in this connection avers that plaintiff did not suffer damages in the sum of $350.00 or any other sum whatsoever, and that said sum of $350.00 or any other sum whatsoever is a reasonable attorneys' fee, and denies that plaintiff is entitled to recover any attorneys' fee in this cause.

XII.

Denies each and every allegation contained in Paragraph XII of said first cause of action. In this connection the defendant alleges that on or about the date the said policy (4) [30] of in-

surance was executed and delivered to said Schnell in Germany as aforesaid, and for a number of years thereafter until the great depreciation in the German mark currency during and following the World War, a German mark of the mark currency in which said contract of insurance was payable, to wit, the Deutsches Reichswehrung mark, was worth in the open market approximately 23.87 cents in American currency. The German Empire was succeeded in November, 1918, by a provisional form of government, which in the following year was succeeded by the Republic of Germany. During and following the World War the Deutsches Reichswehrung mark, that is the currency of German Reich, continued to be the currency of the German Empire until it ceased to exist, and thereafter continued to be the mark currency of the provisional government and its successor, the Republic of Germany, until August, 1924; but in the meantime it had greatly depreciated in purchasing power as contrasted with the currencies of other countries, as the result largely of currency inflation in Germany, the economic consequences of German defeat in the war, the burdens internally assumed to support the war, and those later externally imposed as the result of the war. By August 30, 1924, the mark currency in which said policy was payable had practically no purchasing power, and by laws enacted on said date the Republic of Germany created and put into circulation an entirely new currency, with a monetary unit known as the Reichsmark, and stabilized the old currency in which the said policy of insurance was payable on the basis of one million million of

old marks being equal to one Reichsmark. The conventional ratio thus established was in accordance with the actual ratio of value. By the terms of said legislation, after the establishment of a new German currency as aforesaid all contracts payable in the old marks, (5) [31] including the said insurance policy issued to Schnell, were payable in old marks of the number specified in the contracts, or in the new Reichsmark on the basis of one million million of the former for one of the latter. (6) [32]

FIRST FURTHER AND SEPARATE ANSWER AND DEFENSE TO THE FIRST CAUSE OF ACTION CONTAINED IN THE AMENDED COMPLAINT.

For a first, further and separate answer and defense to the first cause of action contained in the amended complaint, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things alleged in the foregoing answer, and by reference makes them a part hereof; and further alleges:

II.

That on the 7th day of February, 1905, and for some time prior thereto, and at all times thereafter, the defendant, under and pursuant to the German laws relating thereto, was authorized to transact the business of issuing life insurance policies and other forms of insurance within the German Empire. Theretofore, and on or about May 12, 1901,

there was duly enacted and promulgated by the Empire of Germany a law relating to the control and supervision of private insurance companies, the provisions of which were applicable to this defendant, and said laws have not been modified or repealed. A correct English translation of material portions of said law applicable to this defendant and to the issues in this case is hereto attached, marked Exhibit "B," and made a part hereof.

III.

On or about the 10th day of December, 1904, Ludwig Schnell, a native-born subject of Germany, and then and at all times thereafter a resident of the city of Breslau, Germany, made application to the defendant for a policy of life insurance, which application was issued by him in Breslau, Germany. In said application he gave his place of birth as Strehlen, in Silesia, Germany. Thereafter and pursuant to said application the defendant issued to the said Schnell, at its office in (7) [33] Berlin, Germany, policy of insurance numbered 1554478, to which reference was made in the foregoing answer, and an English translation of which is attached hereto as Exhibit "A." Said policy was executed and issued by the defendant in Germany, in the German language, was by its terms payable in German currency at the office of the defendant in Berlin. At the time said policy of insurance was issued and at all times thereafter the defendant was, and now is, domiciled in Germany, authorized there to transact business, and during all of said time has main-

tained and still maintains an office and agent upon whom service of process issued out of any af the courts of Germany may be made, and during all of said time the defendant was, and now is, subject to the jurisdiction of the German courts and other German civil authorities.

IV.

Prior to the 31st day of December, 1921, there was duly created and organized under the laws of Germany a life insurance stock company called and known as "Kronos Deutsche Lebens-Versicherungs-Aktien-Gesellschaft," hereinafter called the Kronos, which corporation was duly qualified, authorized and empowered by the laws of Germany, and particularly by article 14 of said Exhibit "B" and the regulations of the insurance authorities thereof, to engage in the business of issuing policies of life insurance in various forms, to take and receive the transfer of the insurance business of the defendant as hereinafter more particularly alleged, and to undertake the performance of certain outstanding contracts and insurance policies of the defendant, including the policy which had been issued to the said Schnell. On December 31, 1921, the defendant, conformably to and in compliance with the provisions (8) [34] of German law, and with the approval of the German insurance authorities, an approval given under the provisions of the German insurance law which authorized the transfer, assigned its business in Germany to said Kronos German Life Insurance Stock Company. Under the contract effecting such transfer defend-

ant transferred to the Kronos about December 31, 1921, all of its German business, policies and contracts, excepting one (1) policies payable by their terms in currencies other than German marks, and (2) policies held by citizens and subjects of other countries, and (3) policies held by German citizens and subjects who were not residents of Germany and were paying premiums outside of Germany. Said exceptions did not include the policy and contract of insurance issued to the said Schnell. The policies so excluded, amounting in number only to 422, were excluded from the transfer by the German insurance authorities for the reason that the business of said Kronos was limited to Germany.

Said Kronos was organized under the authority and supervision of Germany, and in accordance with its laws, by representatives of German banks and other financial and industrial companies and corporations of the highest financial responsibility, and at all times was, and now is, solvent and financially able to keep and perform all and singular its contracts and undertakings.

At the time of the transfer to the said Kronos and as a part of said transaction, and in consideration of the obligations hereinafter more particularly referred to, assumed by the Kronos, defendant transferred and turned over to said Kronos, conformably to German law and under the control of the German authorities supervising insurance, the defendant's entire German premium reserve, which included all reserves and assets of the (9) [35]

defendant accruing from or growing out of all premiums paid upon contracts of insurance issued by the defendant in Germany and consisting (1) of cash, (2) German federal, state and municipal bonds, and (3) amounts owing by reason of loans on policies, amounting in all to 114,560,678.08 marks, and, as required by the said Kronos and the said German authorities, a further sum of 2,000,000 marks, denominated a "caution" and in addition the said Kronos and the said German supervising insurance authorities required, in connection with said transfer and as a further consideration for the acceptance thereof by said Kronos, that there should be conveyed to said Kronos an additional sum, denominated an extra premium reserve, paid over by defendant and deposited with said German insurance authorities in order to provide the said Kronos with an additional and extra contingency fund to aid said Kronos to meet any further depreciation in the market value of the transferred and deposited securities so as to enable it to maintain the same dividend scale to policy-holders that defendant would have paid. And this additional sum so required, amounting to 37,107,137.34 marks, which was in excess of thirty-two (32%) per cent of the entire German premium reserve accruing from and growing out of premiums paid on contracts and policies of insurance issued in Germany, was paid over by the defendant.

In consideration of the premises, and with the approval and consent of the German government and the German insurance authorities having supervi-

sion over the matter, and conformably to German law, the said Kronos took over the said business, and insurance contracts of the defendant, including the policy issued to the said Schnell, and duly notified said Schnell and all other policy-holders of the defendant affected by such (10) [36] transfer on or about December 31, 1921, of such transfer and that said Kronos had taken said business and policies of the defendant over, and would perform the same and be thereafter substituted for the defendant in all obligations existing by virtue of or growing out of said policies of insurance, and in all future dealings with respect thereto, including the acceptance of all premiums thereafter falling due and the payment of all sums to policy-holders thereafter falling due. That in consideration of the premises the said Schnell assented to the said transfer and the substitution of the Kronos for the defendant, and agreed thereto, and that the defendant would be and was released from its obligation under said policy, and that he would look solely to the said Kronos for the performance thereof.

Thereafter the said Schnell dealt wholly with the said Kronos in reference to his said policy, and paid no further premiums to the defendant. That from the time of said transfer defendant had no direction of and took no part with reference to the said policy of insurance of any business in connection therewith in Germany, which was entirely carried on by the said Kronos as its own business, pursuant to German law and subject to the supervision of the German insurance authorities.

That by reason of the foregoing the defendant has been wholly released from any obligation or contract to the said Schnell by virtue of the policy of insurance issued to the said Schnell by the defendant as aforesaid, and the said Kronos has been substituted in the place and stead of the defendant. (11) [37]

SECOND FURTHER AND SEPARATE ANSWER AND DEFENSE TO THE FIRST CAUSE OF ACTION CONTAINED IN THE AMENDED COMPLAINT.

For a second, further and separate answer and defense to the first cause of action in the amended complaint, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things contained in the foregoing answer and in the foregoing first, further and separate answer and defense to the first cause of action in the amended complaint, and by reference makes the same a part hereof; and further alleges:

II.

On or about December 10, 1904, at Breslau, in Germany, one Ludwig Schnell, a native-born subject of and resident in Germany, made application to defendant in Germany for a policy of life insurance, and pursuant to such application, and in consideration of the premiums to be paid as specified in the policy, the defendant issued to said Schnell, on or about February 7, 1905, at Berlin, Germany, its policy of insurance No. 1554478. Said

policy of insurance was written in the German language, and by its terms was payable in the mark currency of Germany, and in all respects was to be performed in Germany. An accurate English translation of said policy is attached to this answer as Exhibit "A."

At all times since said policy was issued the said Ludwig Schnell was, and now is, a resident in and citizen of Germany. In this connection the defendant alleges that it is informed and believes, and therefore avers the fact to be, that plaintiff is a native-born subject and citizen of Germany, and at all times has been a resident of Germany, and is now a resident of Heidelberg therein.

III.

That article 9 of the German Insurance Law of May (12) [38] 12, 1901, an English translation of portions of which is hereto attached as Exhibit "B," provides and requires that certain general insurance conditions shall be stipulated and contained in each policy of insurance issued by any life insurance company doing business in Germany, and among the conditions so required by law to be contained in every life insurance policy issued in Germany, including the policy of insurance issued by the defendant to the said Schnell, is the condition or stipulation making provision for the proceedings in case of dispute arising from the insurance contract, and designating the court competent to deal therewith.

Conformably to said statutory requirements the

said policy of insurance issued by the defendant to the said Schnell contains the following provision, translated into English:

> "For the execution of the present contract the Company designates as legal domicile the office of its General Representative for the State in which the insurance contract was made.
>
> "For all lawsuits that may arise under this contract the Company, as defendant, submits, at the option of the insured, either to the jurisdiction of the courts to which its General Representative for the State in which the insurance contract was made is subject, or to the jurisdiction of the courts to which the agent, through whom the insurance was made, is subject."

At the time said policy was issued, and ever since and now, the office of the General Representative of the defendant for Germany was and is at Berlin, which is the capital of Germany and also the capital of the German Federal State of Prussia, and the agent through whom the said insurance was negotiated at that time and thereafter was domiciled in Berlin and subject to the jurisdiction of the German courts sitting therein.

IV.

At the time said policy of insurance was issued and (13) [39] at all times thereafter the defendant maintained, and still maintains, an office and General Representative and authorized agent at Berlin, Germany, upon whom service of process is-

sued out of any of the courts of Germany may be made in behalf of and binding upon the defendant; and during all of said times the defendant was, and now is, subject to the processes and the jurisdiction of the German courts sitting at Berlin and the German courts sitting at Breslau, and generally to the German courts of the German Empire and its successor, the Republic of Germany. During all of said times the said German courts were, and now are, courts of general and competent jurisdiction, duly constituted and created under German law, and at all times were, and now are, open and functioning, and ready and competent to take jurisdiction with respect to any controversy, dispute or action on or arising out of the said policy of insurance and the enforcement of any right or claim based thereon which is justiciable in character.

During all of the times herein mentioned, and now, and in respect of the performance of said policy of insurance, or any dispute or disputed claim thereon, or any suit or action based on or arising therefrom, and brought in Germany, the courts at Berlin have exclusive jurisdiction and no other German court has or would have any right, power or jurisdiction in respect to such matters, or to pronounce any judgment or decree whatsoever upon or regarding the rights or obligations of either party to said policy or any other party claiming any rights thereunder, that would be recognized or have any force or validity in Germany. And neither the executive, administrative nor judicial authorities of Germany now or at any time lawfully could or would admit or recognize the right or jurisdiction

(14) [40] of any court in Germany or in any other country other than the courts of Berlin to pronounce any judgment or decree in respect of any dispute or controversy arising out of the policy.

And in this connection the defendant further alleges that any judgment pronounced by the courts of Oregon, or pronounced by any court other than the German court at Berlin, would not and will not be recognized by, and would not and will not be given any force or effect whatsoever in Germany, either under the laws of Germany or the principles of international comity, and will not and would not in anywise impair or take from the plaintiff a right to bring an action in the German courts at Berlin against this defendant upon the insurance policy. That provisions in contracts of insurance similar to those hereinbefore set forth with respect to the German courts having jurisdiction of disputed claims arising on the said Schnell policy, have been interpreted and the effect thereof determined by competent courts of Germany in sundry decisions, among others, that of Wilhelm Rinck against the New York Life Insurance Company, decided by the Berlin Court of Appeals on or about November 2, 1927. Said action was upon a policy of insurance issued by the defendant, which contained a clause or condition similar to the provisions herein set forth and which specified certain courts as having jurisdiction of disputes and lawsuits arising under the policy. The said Court of Appeals is a court of record, with general jurisdiction, and there is no higher court in Germany except the Supreme Court of the Reich, and the de-

cisions of said Court of Appeals are of binding force and effect under the laws of Germany and throughout the whole of Germany unless and until (15) [41] overruled and set aside by the Supreme Court. Said decision has not been overruled or set aside by the Supreme Court. By said decision it was held and adjudged that under the laws of Germany at the time the policy of insurance involved in the said Rinck case was issued, and at all times thereafter, being the aforementioned German insurance law of May 12, 1901, and the provisions of the policy, no action upon a policy of insurance containing such provisions could be prosecuted or maintained in any court, foreign or domestic, except the court specified in the policy, and that no other court had any power or jurisdiction to entertain such suit or action or pronounce judgment therein, and that no judgment pronounced by any other court had any force or effect whatsoever.

To the same effect are the decisions in the Dessau case, rendered by the Landsgericht (District Court) of Berlin on May 17, 1924, and in the Daunert case, rendered by the same court on June 28, 1928, and in the Gorgas case, rendered by the Court of Appeals sitting in Berlin, on January 9, 1929.

V.

That by reason of the matters and things hereinbefore alleged this court has no jurisdiction over the subject matter and in any event should not take or exercise jurisdiction herein or pronounce or undertake to pronounce any judgment for or against either party to this action, but should abate and dismiss the action. (16) [42]

ANSWER TO SECOND CAUSE OF ACTION.

Comes now the defendant, and answering the second cause of action set forth in the amended complaint herein:

I.

Admits that at all times mentioned in the amended complaint the defendant was, and now is, a corporation organized and existing under and by virtue of the laws of the State of New York, and that it is now doing business in the State of Oregon as a foreign insurance company in compliance with the laws of the State of Oregon relating thereto. Admits that the business of the defendant, among other things, during all of said times was and now is the entering into and issuance of life insurance policies. Admits that for some years prior to August 1, 1914, it was authorized to and did issue policies of insurance in the German Empire and in other foreign countries. Denies that defendant at any time was and now is authorized to and did issue life insurance policies in the State of Oregon or in any part of the United States other than the State of New York. Denies that defendant has issued any policies of life insurance in the Empire of Germany, or its successor, the Republic of Germany, since August 1, 1914. Denies each and every other allegation contained in Paragraph I of said second cause of action.

II.

Admits that on or about the 14th day of July, 1902, on the application of Martin Loeb, and in

consideration of the annual premium of 1,074.60 marks D. Rwg., or Deutsches Reichswehrung marks, which translated into English means marks in the currency of the German Empire, the defendant executed, issued and delivered to the said Loeb, in Germany, its policy No. 1501882. Said policy was written in the German (17) [43] language, payable in the German currency, and by the terms thereof all payments to be made under or pursuant to said policy were to be made in Germany. In this connection the defendant further alleges that in the said application for the policy the said Loeb gave his place of birth as Stuttgart, Germany, and his address and place of residence as Stuttgart, Germany, which is the present address and place of residence of said Loeb, as defendant is informed and believes, and therefore avers the fact to be. An accurate English translation of said policy is hereto attached, marked Exhibit "C," and hereby made a part of this answer. Denies each and every other allegation contained in Paragraph II of said second cause of action.

III.

Answering Paragraph III of said second cause of action, the defendant avers that a true English translation of said policy of insurance is attached hereto as aforesaid, and reference is made thereto for a full and particular statement of all the terms and conditions of the policy. Denies the remaining allegations contained in said Paragraph III.

IV.

Denies the allegations contained in Paragraph IV of said second cause of action.

V.

Answering Paragraph V, the defendant admits that there is no loan made by the defendant outstanding on said policy. As to the remaining allegations contained in Paragraph V the defendant has not any knowledge or information sufficient to form a belief, and therefore denies the same.

VI.

Answering Paragraph VI of the said second cause of action, the defendant has not any knowledge or information (18) [44] sufficient to form a belief as to whether the insured was alive on July 12, 1922, or is now alive, and therefore denies the same. Denies each and every other allegation contained in said Paragraph VI.

VII.

Denies the allegations contained in Paragraph VII of said second cause of action.

VIII.

Denies the allegations contained in Paragraph VIII of said second cause of action.

IX.

Denies the allegations contained in Paragraph IX of said second cause of action.

X.

Denies the allegations contained in Paragraph X of said second cause of action, and in this connection the defendant denies that the plaintiff has suffered damages in the sum of $7,155.00, or any other sum whatsoever.

XI.

Denies the allegations contained in Paragraph XI of said second cause of action, and in this connection avers that plaintiff did not suffer damages in the sum of $700.00 or any other sum whatsoever, and that said sum of $700.00 or any other sum whatsoever is a reasonable attorney's fee, and denies that plaintiff is entitled to recover any attorneys' fee in this cause.

XII.

Denies each and every allegation contained in Paragraph XII of said second cause of action. In this connection the defendant alleges that on or about the date the said policy (19) [45] of insurance was executed and delivered to the said Loeb in Germany as aforesaid, and for a number of years thereafter until the great depreciation in the German mark currency during and following the World War, a German mark of the mark currency in which said contract of insurance was payable, to wit, the Deutsches Reichswehrung mark, was worth in the open market approximately 23.87 cents in American currency. The German Empire was succeeded in November, 1918, by a provisional form of government, which in the following year was succeeded by the Republic of Germany. During and following the World War the Deutsches Reichswehrung mark, that is the currency of the German Reich, continued to be the currency of the German Empire untitl it ceased to exist, and thereafter continued to be the mark currency of the provisional government and its successor, the Republic of Germany, until August, 1924; but in the meantime it

had greatly depreciated in purchasing power as contrasted with the currencies of other countries, as the result largely of currency inflation in Germany, the economic consequences of German defeat in the war, the burdens internally assumed to support the war, and those later externally imposed as the result of the war. By August 30, 1924, the mark currency in which said policy was payable had practically no purchasing power, and by laws enacted on said date the Republic of Germany created and put into circulation an entirely new currency, with a monetary unit known as the Reichsmark, and stabilized the old currency in which the said policy of insurance was payable on the basis of one million million of old marks being equal to one Reichsmark. The conventional ratio thus established was in accordance with the actual ratio of value. By the terms of said legislation, after the establishment of a new German (20) [46] currency as aforesaid all contracts payable in the old marks, including the said insurance policy issued to Loeb, were payable in old marks of the number specified in the contracts, or in the new Reichsmark on the basis of one million million of the former for one of the latter. (21) [47]

FIRST FURTHER AND SEPARATE ANSWER AND DEFENSE TO THE SECOND CAUSE OF ACTION CONTAINED IN THE AMENDED COMPLAINT.

For a first, further and separate answer and defense to the second cause of action contained in the amended complaint, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things alleged in the foregoing answer, and by reference makes them a part hereof; and further alleges:

II.

That on the 14th day of July, 1902, and for some time prior thereto, and at all times thereafter, the defendant, under and pursuant to the German laws relating thereto, was authorized to transact the business of issuing life insurance policies and other forms of insurance within the German Empire. Theretofore, and on or about May 12, 1901, there was duly enacted and promulgated by the Empire of Germany a law relating to the control and supervision of private insurance companies, the provisions of which were applicable to this defendant, and said laws have not been modified or repealed. A correct English translation of material portions of said law applicable to this defendant and to the issues in this case is hereto attached, marked Exhibit "B," and made a part hereof.

III.

On or about the 30th day of April, 1902, Martin Loeb, a native-born subject of Germany, and then and at all times thereafter a resident of the city of Stuttgart, Germany, made application to the defendant for a policy of life insurance, which application was issued by him in Stuttgart, Germany, In said application he gave his place of birth *of birth* as Stuttgart, in Germany. Thereafter and pursuant to said application the defendant issued to the said Loeb, at its office in (22) [48] Stutt-

gart, Germany, policy of insurance numbered 1,501,882, to which reference was made in the foregoing answer, and an English translation of which is attached hereto as Exhibit "C." Said policy was executed and issued by the defendant in Germany, in the German language, was by its terms payable in German currency at the office of the defendant in Stuttgart. At the time said policy of insurance was issued and at all times thereafter the defendant was, and now is, domiciled in Germany, authorized there to transact business, and during all of said time has maintained and still maintains an office and agent upon whom service of process issued out of any of the courts of Germany may be made, and during all of said time the defendant was, and now is, subject to the jurisdiction of the German courts and other German civil authorities.

IV.

Prior to the 31st day of December, 1921, there was duly created and organized under the laws of Germany a life insurance stock company called and known as "Kronos Deutsche Lebens-Versicherungs-Aktien-Gesellschaft," hereinafter called the Kronos, which corporation was duly qualified, authorized and empowered by the laws of Germany, and particularly by Section 14 of said Exhibit "B" and the regulations of the insurance authorities thereof, to engage in the business of issuing policies of life insurance in various forms, to take and receive the transfer of the insurance business of the defendant as hereinafter more particularly alleged, and to undertake the performance of certain outstanding

contracts and insurance policies of the defendant, including the policy which had been issued to the said Loeb. On December 31, 1921, the defendant, conformably to and in compliance with the provisions (23) [49] of German law, and with the approval of the German insurance authorities, an approval given under the provisions of the German insurance law which authorized the transfer, assigned its business in Germany to said Kronos German Life Insurance Stock Company. Under the contract effecting such transfer defendant transferred to the Kronos about December 31, 1921, all of its German business, policies and contracts, excepting (1) policies payable by their terms in currencies other than German marks, and (2) policies held by citizens and subjects of other countries, and (3) policies held by German citizens and subjects who were not residents of Germany and were paying premiums outside of Germany. Said exception did not include the policy and contract of insurance issued to the said Loeb. The policies so excluded, amounting in number only to 422, were excluded from the transfer by the German insurance authorities for the reason that the business of said Kronos was limited to Germany.

Said Kronos was organized under the authority and supervision of Germany, and in accordance with its laws, by representatives of German banks and other financial and industrial companies and corporations of the highest financial responsibility, and at all times was, and now is, solvent and finan-

cially able to keep and perform all and singular its contracts and undertakings.

At the time of the transfer to the said Kronos, and as a part of said transaction, and in consideration of the obligations hereinafter more particularly referred to, assumed by the Kronos, defendant transferred and turned over to said Kronos, conformably to German law and under the control of the German authorities supervising insurance, the defendant's entire German premium reserve, which included all reserves and assets of the (24) [50] defendant accruing from or growing out of all premiums paid upon contracts of insurance issued by the defendant in Germany, and consisting (1) of cash, (2) German federal, state and municipal bonds, and (3) amounts owing by reason of loans on policies, amounting in all to 114,560,678.08 marks, and, as required by the said Kronos and the said German authorities, a further sum of 2,000,000 marks, denominated a "caution" and in addition the said Kronos and the said German supervising insurance authorities required, in connection with said transfer and as a further consideration for the acceptance thereof by said Kronos, that there should be conveyed to said Kronos an additional sum, denominated an extra premium reserve, paid over by defendant and deposited with said German insurance authorities in order to provide the said Kronos with an additional and extra contingency fund to aid said Kronos to mee*y* any further depreciation in the market value of the transferred and deposited securities so as to enable it to maintain the

same dividend scale to policy-holders that defendant would have paid. And this additional sum so required, amounting to 37,107,137.34 marks, which was in excess of thirty-two (32%) per cent of the entire German premium reserve accruing from and growing out of premiums paid on contracts and policies of insurance issued in Germany, was paid over by the defendant.

In consideration of the premises, and with the approval and consent of the German government and the German insurance authorities having supervision over the matter, and conformably to German law, the said Kronos took over the said business, and insurance contracts of the defendant, including the policy issued to the said Loeb, and duly notified said Loeb and all other policy-holders of the defendant affected by such transfer (25) [51] on or about December 31, 1921, of such transfer and that said Kronos had taken said business and policies of the defendant over, and would perform the same and be thereafter substituted for the defendant in all obligations existing by virtue of or growing out of said policies of insurance, and in all future dealings with respect thereto, including the acceptance of all premiums thereafter falling due and the payment of all sums to policy-holders thereafter falling due. That in consideration of the premises the said Loeb assented to the said transfer and the substituiton of the Kronos for the defendant, and agreed thereto, and that the defendant would be and was released from its obligation

under said policy, and that he would look solely to the said Kronos for the performance thereof.

Thereafter the said Loeb dealt wholly with the said Kronos in reference to his said policy, and paid no further premiums to the defendant. That from the time of said transfer defendant had no direction of and took no part with reference to the said policy of insurance or any business in connection therewith in Germany, which was entirely carried on by the said Kronos as its own business, pursuant to German law and subject to the supervision of the German insurance authorities.

That by reason of the foregoing the defendant has been wholly released from any obligation or contract to the said Loeb by virtue of the policy of insurance issued to the said Loeb by the defendant as aforesaid, and the said Kronos has been substituted in the place and stead of the defendant. (26) [52]

SECOND FURTHER AND SEPARATE ANSWER AND DEFENSE TO THE SECOND CAUSE OF ACTION CONTAINED IN THE AMENDED COMPLAINT.

For a second, further and separate answer and defense to the second cause of action in the amended complaint, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things contained in the foregoing answer and in the foregoing first, further and separate

answer and defense to the second cause of action in the amended complaint, and by reference makes the same a part hereof, and further alleges:

II.

That on or about the 30th day of April, 1902, at Stuttgart, Germany, Martin Loeb, a native born citizen and subject and resident of said Stuttgart, Germany, made application to the defendant in said Stuttgart for a policy of life insurance, and pursuant to said application and in consideration of the premiums to be paid as specified in said policy, the defendant issued to the said Loeb, on or about July 14, 1902, at Stuttgart, its policy of insurance No. 1501882. Said policy of insurance was written in the German language, by its terms was payable in the mark currency of Germany, and in all respects was to be performed therein. An accurate English translation of said policy is attached hereto as Exhibit "C." At all times since said policy was issued the said Martin Loeb was, and now is, a resident in and citizen of Germany, his last known place of address being Stuttgart. During all of said times the plaintiff was and now is a native-born citizen and subject of Germany, residing at Heidelberg therein.

III.

That Article 9 of the German Insurance Law of May 12, 1901, an English translation of portions of which is hereto attached as Exhibit "B," provides and requires that certain general insurance conditions shall be stipulated and (27) [53] contained

in each policy of insurance issued by any life insurance company doing business in Germany, and among the conditions so required by law to be contained in every life insurance policy issued in Germany, including the policy of insurance issued by the defendant to the said Loeb, is the condition or stipulation making provision for the proceedings in case of dispute arising from the insurance contract, and designating the court competent to deal therewith.

Conformably to said statutory requirements the said policy of insurance issued by the defendant to the said Loeb contains the following provision, translated into English:

> "LEGAL DOMICILE: For the performance of the present contract, the courts in Stuttgart alone are competent; as legal domicile for the Company there is stipulated its office at Stuttgart and for the insured and the beneficiary the place stipulated in the application for the insurance."

The stipulated place of residence and domicile of the insured (there being no other beneficiary named) in said application was Stuttgart.

IV.

At the time said policy of insurance was issued, and at all times thereafter the defendant maintained, and still maintains, an agent and General Representative in Germany upon whom service of process issued out of the courts at Stuttgart or issued out of any of the courts of Germany may be

made in behalf of and binding upon the defendant, and during all of said times defendant was, and now is, subject to the processes and the jurisdiction of the German courts sitting at Stuttgart and the German courts sitting elsewhere within Germany. During all of said time the said courts were, and now are, courts of general and competent jurisdiction, duly constituted and (28) [54] created by the German government under German law, and at all times were, and now are, open and functioning and ready and competent to take jurisdiction with respect to any controversy, dispute or action on or arising out of the said policy of insurance and the enforcement of any right or claim based thereon which is justiciable in character.

During all of the times herein mentioned, and now, and in respect of the performance of said policy of insurance, or any dispute or disputed claim thereon, or any suit or action based on or arising therefrom, and brought in Germany, the courts at Stuttgart have exclusive jurisdiction and no other German court has or would have any right, power or jurisdiction in respect to such matters, or to pronounce any judgment or decree whatsoever upon or regarding the rights or obligations of either party to said policy or any other party claiming any rights thereunder, that would be recognized or have any force or validity in Germany. And neither the executive, administrative nor judicial, authorities of Germany now or at any time lawfully could or would admit or recognize the right or jurisdiction of any court in Germany or in any other

country other than the courts of Stuttgart to pronounce any judgment or decree in respect of any dispute or controversy arising out of the policy.

And in this connection the defendant further alleges that any judgment pronounced by the courts of Oregon, or pronounced by any court other then the German court at Stuttgart, would not and will not be recognized by, and would not and will not be given any force or effect whatsoever in Germany, either under the laws of Germany or the principles of international comity, and will not and would not in anywise impair (29) [55] or take from the plaintiff a right to bring an action in the German courts at Stuttgart against this defendant upon the insurance policy. That provisions in contracts of insurance similar to those hereinbefore set forth with respect to the German courts having jurisdiction of disputed claims arising on the said Loeb policy, have been interpreted and the effect thereof determined by competent courts of Germany in sundry decisions, among others, that of Wilhelm Rinck against the New York Life Insurance Company, decided by the Berlin Court of Appeals on or about November 2, 1927. Said action was upon a policy of insurance issued by the defendant, which contained a clause or condition similar to the provisions herein set forth, and which specified certain courts as having jurisdiction of disputes and lawsuits arising under the policy. The said Court of Appeals is a court of record, with general jurisdiction, and there is no higher court in Germany except the Supreme Court of the Reich, and the decisions of

said Court of Appeals are of binding force and effect under the laws of Germany and throughout the whole of Germany unless and until overruled and set aside by the Supreme Court. Said decision has not been overruled or set aside by the Supreme Court. By said decision it was held and adjudged that under the laws of Germany at the time the policy of insurance involved in the said Rinck case was issued, and at all times thereafter, being the aforementioned German insurance law of May 12, 1901, and the provisions of the policy, no action upon a policy of insurance containing such provisions could be prosecuted or maintained in any court, foreign or domestic, except the Court specified in the policy, and that no other court had any power or jurisdiction to entertain such suit or action or pronounce (30) [56] judgment therein, and that no judgment pronounced by any other court had any force or effect whatsoever.

To the same effect are the decisions in the Dessau case, rendered by the Landsgericht (District Court) of Berlin on May 17, 1924, and in the Daunert case, rendered by the same court on June 28, 1928, and in the Gorgas case, rendered by the Court of Appeals sitting in Berlin, on January 9, 1929.

V.

That by reason of the matters and things hereinbefore alleged this court has no jurisdiction over the subject matter and in any event should not take or exercise jurisdiction herein or pronounce or undertake to pronounce any judgment for or against

either party to this action, but should abate and dismiss the action. (31) [57]

THIRD FURTHER AND SEPARATE ANSWER AND DEFENSE TO THE SECOND CAUSE OF ACTION CONTAINED IN THE AMENDED COMPLAINT.

For a third, further and separate answer and defense to the second cause of action in the amended complaint, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things set forth in the foregoing answer and in the foregoing first and second defenses to the second cause of action, and by reference makes them a part hereof; and further alleges:

II.

That for more than six years prior to the commencement of this action the defendant was authorized to engage in and was engaged in the life insurance business in the State of Oregon, under the laws thereof relating to the transaction in said state of a life insurance business by a foreign corporation; and during all of said time the defendant maintained offices in Oregon and agents upon whom service of process issued out of any of the courts of the State of Oregon or out of the federal court sitting in Oregon might be made; and during all of said time had and maintained a statutory agent and attorney in fact upon whom service of process in Oregon might be ma*f*e in behalf of and binding

upon the defendant in any suit or action of which the courts sitting in Oregon might or properly should take jurisdiction. This action was commenced by the filing of the complaint with the Clerk of the court in which the action was brought on December 26, 1928.

III.

That the second cause of action set up or attempted to be set up in the amended complaint herein, if any exists, which defendant denies, accrued prior to July 1, 1922, and more than (32) [58] six years prior to the commencement of this action, and by reason thereof the said second cause of action is barred by the statute of limitations of the State of Oregon. (33) [59]

ANSWER TO THIRD CAUSE OF ACTION.

Comes now the defendant, and answering the third cause of action set forth in the amended complaint herein:

I.

Admits that at all times mentioned in the amended complaint the defendant was, and now is, a corporation organized and existing under and by virtue of the laws of the State of New York, and that it is now doing business in the State of Oregon as a foreign insurance company in compliance with the laws of the State of Oregon relating thereto. Admits that the business of the defendant, among other things, during all of said times was and now is the entering into and issuing of life insurance policies. Admits that for some years prior to August 1, 1914, it was authorized to and did issue policies of life insurance in the German Empire and

in other foreign countries. Denies that defendant at any time was and now is authorized to and did issue life insurance policies in the State of Oregon or in any part of the United States other than the State of New York. Denies that defendant has issued any policies of life insurance in the Empire of Germany, or its successor, the Republic of Germany, since August 1, 1914. Denies each and every other allegation contained in Paragraph I of said third cause of action.

II.

Admits that on or about the 27th day of September, 1902, on the application of Hermann Kaiser-Bluth, and in consideration of the annual premium of 1,524.30 marks D. Rwg., or Deutsches Reichswehrung marks, which translated into English means marks in the currency of the German Empire, the defendant executed, issued and delivered to the said Kaiser-Bluth, in Germany, its policy No. 1,505,347. Said policy was written in (34) [60] the German language, payable in the German currency, and by the terms thereof all payments to be made under or pursuant to said policy were to be made in Germany. In this connection the defendant further alleges that in the said application for the policy the said Kaiser-Bluth gave his place of birth as Naumberg, Germany, and his address and place of residence as Koln (Cologne), Germany, which is the present address and place of residence of said Kaiser-Bluth, as defendant is informed and believes, and therefore avers the fact to be. An accurate English translation of said policy is hereto attached and marked Exhibit "D," and made a

part of this answer, except the general and special conditions and tables therein contained, which are identical with those contained in the Schnell policy (Exhibit "A"), except as to amounts and tables of loans, paid-up and cash surrender values of said policy, and reference is hereby made to the said Schnell policy in this connection. Denies each and every other allegation contained in Paragraph II of said third cause of action.

III.

Answering Paragraph III of said third cause of action, the defendant avers that a true English translation of said policy of insurance is attached hereto as aforesaid, and reference is made thereto for a full and particular statement of all the terms and conditions of the policy. Denies the remaining allegations contained in said Paragraph III.

IV.

Denies the allegations contained in Paragraph IV of said third cause of action.

V.

Answering Paragraph V, the defendant admits that (35) [61] there is no loan made by the defendant outstanding on said policy. As to the remaining allegations contained in Paragraph V the defendant has not any knowledge or information sufficient to form a belief, and therefore denies the same.

VI.

Answering Paragraph VI of the said third cause of action, the defendant has not any knowledge or

information sufficient to form a belief as to whether the insured was alive on September 24, 1922, or is now alive, and therefore denies the same. Denies each and every other allegation contained in said Paragraph VI.

VII.

Denies the allegations contained in Paragraph VII of said third cause of action.

VIII.

Denies the allegations contained in Paragraph VIII of said third cause of action.

IX.

Denies the allegations contained in Paragraph IX of said third cause of action.

X.

Denies the allegations contained in Paragraph X of said third cause of action, and in this connection the defendant denies that the plaintiff has suffered damages in the sum of $10,732.00, or any other sum whatsoever.

XI.

Denies the allegations contained in Paragraph XI of said third cause of action, and in this connection avers that plaintiff did not suffer damages in the sum of $1,000.00 or any other sum whatsoever, and that said sum of $1,000.00 or (36) [62] any other sum whatsoever is a reasonable attorneys' fee, and denies that plaintiff is entitled to recover any attorneys' fee in this cause.

XII.

Denies each and every allegation contained in Paragraph XII of said third cause of action. In this connection the defendant alleges that on or about the date the said policy of insurance was executed and delivered to the said Kaiser-Bluth in Germany as aforesaid, and for a number of years thereafter until the great depreciation in the German mark currency during and following the World War, a German mark of the mark currency in which said contract of insurance was payable, to wit, the Deutsches Reichswehrung mark, was worth in the open market approximately 3.87 cents in American currency. The German Empire was succeeded in November, 1918, by a provisional form of government, which in the following year was succeeded by the Republic of Germany. During and following the World War the Deutsches Reichswehrung mark, that is the currency of the German Reich, continued to be the currency of the German Empire until it ceased to exist, and thereafter continued to be the mark currency of the provisional government and its successor, the Republic of Germany, until August, 1924; but in the meantime it had greatly depreciated in purchasing power as contrasted with the currencies of other countries, as the result largely of currency inflation in Germany, the economic consequences of German defeat in the war, the burdens internally assumed to support the war, and those later externally imposed as the result of the war. By August 30, 1924, the mark currency in which said policy was payable had practically no purchasing power,

and by laws enacted on (37) [63] said date the Republic of Germany created and put into circulation an entirely new currency, with a monetary unit known as the Reichsmark, and stabilized the old currency in which the said policy of insurance was payable on the basis of one million million of old marks being equal to one Reichsmark. The conventional ratio thus established was in accordance with the actual ratio of value. By the terms of said legislation, after the establishment of a new German currency as aforesaid all contracts payable in the old marks, including the said insurance policy issued to Kaiser-Bluth, were payable in old marks of the number specified in the contracts, or in the new Reichsmark on the basis of one million million of the former for one of the latter. (38) [64]

FIRST FURTHER AND SEPARATE ANSWER AND DEFENSE TO THE THIRD CAUSE OF ACTION CONTAINED IN THE AMENDED COMPLAINT.

For a first, further and separate answer and defense to the third cause of action contained in the amended complaint, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things alleged in the foregoing answer, and by reference makes them a part hereof; and further alleges:

II.

That on the 27th day of September, 1902, and for some time prior thereto, and at all times

thereafter, the defendant, under and pursuant to the German laws relating thereto, was authorized to transact the business of issuing life insurance policies and other forms of insurance within the German Empire. Theretofore, and on or about May 12, 1901, there was duly enacted and promulgated by the Empire of Germany a law relating to the control and supervision of private insurance companies, the provisions of which were applicable to this defendant, and said laws have not been modified or repealed. A correct English translation of material portions of said law applicable to this defendant and to the issues of this case is hereto attached, marked Exhibit "B," and made a part hereof.

III.

On or about the 21st day of September, 1902, Hermann Kaiser-Bluth, a native born subject of Germany, and then and at all times thereafter a resident of the city of Koln (Cologne), Germany, make application to the defendant for a policy of life insurance, which application was signed by him in Koln (Cologne), Germany. In said application he gave his place of birth as Naumberg, in Germany. Thereafter and pursuant to said application the defendant issued to the said Kaiser-Bluth, (39) [65] at its office in Berlin, Germany, policy of insurance numbered 1505347, to which reference was made in the foregoing answer, and an English translation of which, as aforesaid, is attached hereto as Exhibit "D." Said policy was executed and issued by the defendant in Germany, in the German language, was by its terms payable in

German currency at the office of the defendant in Berlin. At the time said policy of insurance was issued and at all times thereafter, the defendant was, and now is, domiciled in Germany, authorized there to transact business, and during all of said time has maintained and still maintains an office and agent upon whom service of process issued out of any of the courts of Germany may be made, and during all of said time the defendant was, and now is, subject to the jurisdiction of the German courts and other German civil authorities.

IV.

Prior to the 31st day of December, 1921, there was duly created and organized under the laws of Germany a life insurance stock company called and known as "Kronos Deutsche Lebens-Versicherungs-Aktien-Gesellschaft," hereinafter called the Kronos, which corporation was duly qualified, authorized and empowered by the laws of Germany, and particularly by Article 14 of said Exhibit "B," and the regulations of the insurance authorities thereof, to engage in the business of issuing policies of life insurance in various forms, to take and receive the transfer of the insurance business of the defendant as hereinafter more particularly alleged, and to undertake the performance of certain outstanding contracts and insurance policies of the defendant, including the policy which had been issued to the said Kaiser-Bluth. On December 31, 1921, the defendant, conformably to and in compliance with the (40) [66] provisions of German laws, and with the approval of the German in-

surance authorities, an approval given under the provisions of the German insurance law which authorized the transfer, assigned its business in Germany to said Kronos German Life Insurance Stock Company. Under the contract effecting such transfer defendant transferred to the Kronos about December 31, 1921, all of its German business, policies and contracts, exceoting (1) policies payable by their terms in currencies other than German marks, and (2) policies held by citizens and subjects of other countries, and (3) policies held by German citizens and subjects who were not residents of Germany and were paying premiums outside of Germany. Said exception did not include the policy and contract of insurance issued to the said Kaiser-Bluth. The policies so excluded, amounting in number only to 422, were excluded from the transfer by the German insurance authorities for the reason that the business of the said Kronos was limited to Germany.

Said Kronos was organized under the authority and supervision of Germany, and in accordance with its laws, by representatives of German banks and other financial and industrial companies and corporations of the highest financial responsibility, and at all times was, and now is, solvent and financially able to keep and perform all and singular its contracts and undertakings.

At the time of the transfer to the said Kronis, and as a part of said transaction, and in consideration of the obligations hereinafter more particularly referred to, assumed by the said Kronos,

defendant transferred and turned over to said Kronos, conformably to German law and under the control of the German authorities supervising insurance, the defendant's entire German premium reserve which included all reserves and assets (41) [67] of the defendant accruing from or growing out of all premiums paid upon contracts of insurance issued by the defendant in Germany, and consisting (1) of cash, (2) German federal, state and municipal bonds, and (3) amounts owing by reason of loans on policies, amounting in all to 114,560,678.08 marks, and, as required by the said Kronos and the said German authorities, a further sum of 2,000.000 marks, denominated a "caution" and in addition the said Kronos and the said German supervising insurance authorities required, in connection with said transfer and as a further consideration for the acceptance thereof by said Kronos, that there should be conveyed to said Kronos an additional sum, denominated an extra premium reserve, paid over by defendant and deposited with said German insurance authorities in order to provide the said Kronos with an additional and extra contingency fund to aid said Kronos to meet any further depreciation in the market value of the transferred and deposited securities so as to enable it to maintain the same dividend scale to policy-holders that defendant would have paid. And this additional sum so required, amounting to 37,107,137.34 marks, which was in excess of thirty-two (32%) per cent of the entire German premium reserve accruing from and growing out of premiums paid on contracts and policies of insurance

issued in Germany, was paid over by the defendant.

In consideration of the premises, and with the approval and consent of the German government and the German insurance authorities having supervision over the matter, and conformably to German law, the said Kronos took over the said business, and insurance contracts of the defendant, including the policy issued to the said Kaiser-Bluth, and duly notified said Kaiser-Bluth and all other policy-holders of the defendant affected by (42) [68] such transfer on or about December 31, 1921, of such transfer and that said Kronos had taken said business and policies of the defendant over, and would perform the same and be thereafter substituted for the defendant in all obligations existing by virtue of or growing out of said policies of insurance, and in all future dealings with respect thereto, including the acceptance of all premiums thereafter falling due and the payment of all sums to policy-holders thereafter falling due. That in consideration of the premises the said Kaiser-Bluth assented to the said transfer and the substitution of the Kronos for the defendant, and agreed thereto, and that the defendant would be and was released from its obligation under said policy, and that he would look solely to the said Kronos for the performance thereof.

Thereafter the said Kaiser-Bluth dealt wholly with the said Kronos in reference to his said policy, and paid no further premiums to the defendant. That from the time of said transfer defendant had no direction of and took no part with reference to the said policy of insurance or any business in

connection therewith in Germany, which was entirely carried on by the said Kronos as its own business, pursuant to German law and subject to the supervision of the German insurance authorities.

That by reason of the foregoing the defendant has been wholly released from any obligation or contract to the said Kaiser-Bluth by virtue of the policy of insurance issued to the said Kaiser-Bluth by the defendant as aforesaid, and the said Kronos has been substituted in the place and stead of the defendant. (43) [69]

SECOND FURTHER AND SEPARATE ANSWER AND DEFENSE TO THE THIRD CAUSE OF ACTION CONTAINED IN THE AMENDED COMPLAINT.

For a second, further and separate answer and defense to the third cause of action in the amended complaint, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things contained in the foregoing answer and in the foregoing first, further and separate answer and defen*dant* to the third cause of action in the amended complaint, and by reference makes the same a part thereof; and further alleges:

II.

On or about September 21, 1902, at Koln (Cologne), in Germany, one Hermann Kaiser-Bluth, a native born subject of and resident in

Germany, made application to defendant in Germany for a policy of life insurance, and pursuant to such application, and in consideration of the premiums to be paid as specified in the policy, the defendant issued to said Kaiser-Bluth, on or about September 27th, 1902, at Berlin, Germany, its policy of insurance No. 1505347. Said policy of insurance was written in the German language, and by its terms was payable in the mark currency of Germany, and in all respects was to be performed in Germany. An accurate English translation of said policy is hereto attached and marked Exhibit "D," and made a part of this second further and separate answer and defense, except the general and special conditions and tables therein contained, which are identical with those contained in the Schnell policy (Exhibit "A"), except as to amounts and tables of loans, paid-up and cash surrender values of said policy, and reference is hereby made to the said Schnell policy in this connection.

At all times since said policy was issued the said Hermann Kaiser-Bluth was, and now is, a resident in and citizen (44) [70] of Germany. In this connection the defendant alleges that it is informed and believes, and therefore avers the fact to be, that plaintiff is a native-born subject and citizen of Germany, and at all times has been a resident of Germany, and is now a resident of Heidelberg therein.

III.

That Article 9 of the German Insurance Law of May 12, 1901, an English translation of portions

of which is hereto attached as Exhibit "B," provides and requires that certain general insurance conditions shall be stipulated and contained in each policy of insurance issued by any life insurance company doing business in Germany, and among the conditions so required by law to be contained in every life insurance policy issued in Germany, including the policy of insurance issued by the defendant to the said Kaiser-Bluth, is the condition or stipulation making provision for the proceedings in case of dispute arising from the insurance contract and designating the court competent to deal therewith.

Conformably to said statutory requirements the said policy of insurance issued by the defendant to the said Kaiser-Bluth contains the following provision, translated into English:

> "For the execution of the presen*y* contract the Company designates as legal domicile the office of its General Representative for the State in which the insurance contract was made.
>
> "For all lawsuits that may arise under this contract the Company, as defendant, submits, at the option of the insured, either to the jurisdiction of the courts to which its General Representative for the State in which the insurance contract was made is subject, or to the jurisdiction of the courts to which the agent, through whom the insurance was made, is subject."

At the time said policy was issued, and ever since and now, the office of the General Representative of the defendant (45) [71] for Germany was and is at Berlin, which is the capital of Germany and also the capital of the German Federal State of Prussia, and the agent through whom the said insurance was negotiated at that time and thereafter was domiciled in Berlin and subject to the jurisdiction of the German courts sitting therein.

IV.

At the time said policy of insurance was issued and at all times thereafter the defendant maintained, and still maintains, an office and General Representative and authorized agent at Berlin, Germany, upon whom service of process issued out of any of the courts of Germany may be made in behalf of and binding upon the defendant; and during all of said times the defendant was, and now is, subject to the processes and the jurisdiction of the German Courts sitting at Berlin and the German courts sitting at Koln (Cologne), and generally to the German courts of the German Empire and its successor, the Republic of Germany. During all of said times the said German courts were, and now are, courts of general and competent jurisdiction, duly constituted and created under German law, and at all times were, and now are, open and functioning, and ready and competent to take jurisdiction with respect to any controversy, dispute or action on or arising out of the said policy of insurance and the enforcement of any right or claim based thereon which is justiciable in character.

During all of the times herein mentioned, and now, and in respect of the performance of said policy of insurance, or any dispute or disputed claim thereon, or any suit or action based on or arising therefrom, and brought in Germany, the courts at Berlin will have exclusive jurisdiction and no other German court has or would have any right, power or jurisdiction in respect to such matters, or to pronounce any judgment or decree (46) [72] whatsoever upon or regarding the rights or obligations of either party to said policy or any other party claiming any rights thereunder, that would be recognized or have any force or validity in Germany. And neither the executive, administrative nor judicial authorities of Germany now or at any time lawfully could or would admit or recognize the right or jurisdiction of any court in Germany or in any other country other than the courts of Berlin to pronounce any judgment or decree in respect of any dispute or controversy arising out of the policy.

And in this connection the defendant further alleges that any judgment pronounced by the courts of Oregon, or pronounced by any court other than the German court at Berlin, would not and will not be recognized by, and would not and will not be given any force or effect whatsoever in Germany, either under the laws of Germany or the principles of international comity, and will not and would not in anywise impair or take from the plaintiff a right to bring an action in the German courts at Berlin against this defendant upon the insurance policy. That provisions in contracts of insurance similar

to those hereinbefore set forth with respect to the German courts having jurisdiction of disputed claims arising on the said Kaiser-Bluth policy, have been interpreted and the effect thereof determined by competent courts of Germany in sundry decisions, among others, that of Wilhelm Rinck against the New York Life Insurance Company, decided by the Berlin Court of Appeals on or about November 2, 1927. Said action was upon a policy of insurance issued by the defendant, which contained a clause or condition similar to the provisions herein set forth and which specified certain courts as having jurisdiction of disputes and lawsuits arising under the policy. The said Court of Appeals is a court of (47) [73] record, with general jurisdiction, and there is no higher court in Germany except the Supreme Court of the Reich, and the decisions of said Court of Appeals are of binding force and effect under the laws of Germany and throughout the whole of Germany unless and until overruled and set aside by the Supreme Court. By said decision it was held and adjudged that under the laws of Germany at the time the policy of insurance involved in the said Rinck case was issued, and at all times thereafter, being the aforementioned German insurance law of May 12, 1901, and the provisions of the policy, no action upon a policy of insurance containing such provisions could be prosecuted or maintained in any court, foreign or domestic, except the court specified in the policy, and that no other court had any power or jurisdiction to entertain such suit or action or pronounce judgment therein, and that no judgment pro-

nounced by any other court had any force or effect whatsoever.

To the same effect are the decisions in the Dessau case, rendered by the Landsgericht (District Court) of Berlin on May 17, 1924, and in the Daunert case, rendered by the same court on June 28, 1928, and in the Gorgas case, rendered by the Court of Appeals sitting in Berlin, on January 9, 1929.

V.

That by reason of the matters and things hereinbefore alleged this court has no jurisdiction over the subject matter and in any event should not take or exercise jurisdiction herein or pronounce or undertake to pronounce any judgment for or against either party to this action, but should abate and dismiss the action. (48) [74]

THIRD FURTHER AND SEPARATE ANSWER AND DEFENSE TO THE THIRD CAUSE OF ACTION CONTAINED IN THE AMENDED COMPLAINT.

For a third, further and separate answer and defense to the third cause of action in the amended complaint, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things set forth in the foregoing answer and in the foregoing first and second defenses to the third cause of action, and by reference makes them a part hereof; and further alleges:

II.

That for more than six years prior to the commencement of this action this defendant was authorized to engage in and was engaged in the life insurance business in the State of Oregon, under the laws thereof relating to the transaction in said state of a life insurance business by a foreign corporation; and during all of said time the defendant maintained offices in Oregon and agents upon whom service of process issued out of any of the courts of the State of Oregon or out of the federal court sitting in Oregon might be made; and during all of said time had and maintained a statutory agent and attorney-in-fact upon whom service of process in Oregon might be made in behalf of and binding upon the defendant in any suit or action of which the courts sitting in Oregon might or properly should take jurisdiction. This action was commenced by the filing of the complaint with the Clerk of the court in which the action was brought on December 26, 1928.

III

That the third cause of action set up or attempted to be set up in the amended complaint herein, if any exists, which defendant denies, accrued prior to September 1, 1922, and (49) [75] more than six years prior to the commencement of this action, and by reason thereof the said third cause of action is barred by the statute of limitations of the State of Oregon. (50) [76]

FOURTH FURTHER AND SEPARATE ANSWER AND DEFENSE TO THE THIRD CAUSE OF ACTION CONTAINED IN THE AMENDED COMPLAINT.

For a fourth, further and separate answer and defense to the third cause of action in the amended complaint, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things set forth in the foregoing answer and in the foregoing first, second and third defenses to the third cause of action, and by reference makes them a part hereof; and further alleges:

II.

That long prior to the commencement of this action and long prior to the alleged assignment of the said alleged third cause of action contained in the amended complaint unto the plaintiff, Paul Herrmann, and, to wit, in September, 1922, in Germany, there was paid unto the insured under the said policy of insurance the full sum of all principal, accumulated dividends and other sums due or claimed to be due and owing under said policy of insurance, in the mark currency called for by the said policy, and the sums so paid were accepted in full payment, satisfaction and discharge of all claims of whatsoever nature arising out of or based upon the said policy of insurance, and thereupon the said policy of insurance was delivered up and surrendered for cancellation. (51) [77]

ANSWER TO FOURTH CAUSE OF ACTION.

Comes now the defendant, and answering the fourth cause of action set forth in the amended complaint herein:

I.

Admits that at all times mentioned in the amended complaint the defendant was, and now is, a corporation organized and existing under and by virtue of the laws of the State of New York, and that it is now doing business in the State of Oregon as a foreign insurance company in compliance with the laws of the State of Oregon relating thereto. Admits that the business of the defendant, among other things, during all of said times was and now is the entering into and issuing of life insurance policies. Admits that for some years prior to August 1, 1914, it was authorized to and did issue policies of life insurance in the German Empire and in other foreign countries. Denies that defendant at any time was and now is authorized to and did issue life insurance policies in the State of Oregon or in any part of the United States other than the State of New York. Denies that defendant has issued any policies of life insurance in the Empire of Germany, or its successor, the Republic of Germany, since August 1, 1914. Denies each and every other allegation contained in paragraph I of said fourth cause of action.

II.

Admits that on or about the 7th day of December, 1903, on the application of Wilhelm Stadelmeyer,

and in consideration of the annual premium of 413.10 marks D. Rwg., or Deutsches Reichswehrung marks, which translated into English means marks in the currency of the German Empire, the defendant executed, issued and delivered to the said Stadelmeyer, in Germany, its policy numbered 2508291. Said policy was written in the German language, (52) [78] payable in the German currency, and by the terms thereof all payments to be made under or pursuant to said policy were to be made in Germany. In this connection the defendant further alleges that in the said application for the policy the said Stadelmeyer gave his place of birth as Pforzheim, Baden, Germany, and his address and place of residence as Pforzheim, Baden, German, which is the present address and place of residence of said Stadelmeyer, as defendant is informed and believes, and therefore avers the fact to be. An accurate English translation of said policy is hereto attached, marked Exhibit "E," and hereby made a part of this answer. Denies each and every other allegation contained in Paragraph II of said fourth cause of action.

III.

Defendant admits that said Stadelmeyer paid all the premiums upon said policy up to and including 1904. Denies the remaining allegations contained in Paragraph III of said fourth cause of action.

IV.

Answering Paragraph IV, the defendant admits that defendant issued a policy to said Stadel-

meyer, a true English translation of which is attached hereto as Exhibit "E," which fully states all of the terms and conditions of said policy, and admits that in 1905 the said Stadelmeyer ceased to pay premiums, and at that time the policy was converted into paid-up or premium free insurance in the sum or 600 marks of the character specified in the policy, of which proper notation was made upon the policy. Denies each and every other allegation contained in said Paragraph IV. (53) [79]

V.

Admits that there is no debt outstanding against said policy due the defendant. As to whether or not the said Stadlemeyer is alive or was at the commencement of this action the defendant has not any knowledge or information sufficient to form a belief, and therefore denies the same, and denies the remaining allegations contained in said Paragraph V of the fourth cause of action.

VI.

Denies the allegations contained in Paragraph VI of said fourth cause of action.

VII.

Denies the allegations contained in Paragraph VII of said fourth cause of action.

VIII.

Answering Paragraph VIII, defendant denies each and every allegation thereof, and denies that plaintiff has been damaged in the sum of $143.00 or any other sum.

IX.

Denies each and every allegation contained in Paragraph IX of said fourth cause of action. In this connection the defendant alleges that on or about the date the said policy of insurance was executed and delivered to the said Stadelmeyer in Germany as aforesaid, and for a number of years thereafter until the great depreciation in the German mark currency during and following the World War, a German mark of the mark currency in which contract of insurance was payable, to wit, the Deutsches Reichswehrung mark, was worth in the open market approximately 23.87 cents in American currency. The German Empire was succeeded in November, 1918, by a provisional form of government, which in the following year was succeeded by the Republic of Germany. During and following the World War the (54) [80] Deutsches Reichswehrung mark, that is the currency of the German Reich, continued to be the currency of the German Empire until it ceased to exist, and thereafter continued to be the mark currency of the provisional government and its successor, the Republic of Germany, until August, 1924; but in the meantime it had greatly depreciated in purchasing power as contrasted with the currencies of other countries, as the result largely of currency inflation in Germany, the economic consequences of German defeat in the war, the burdens internally assumed to support the war, and those later externally imposed as the result of the war. By August 30, 1924, the mark currency in which said policy was payable

had practically no purchasing power, and by laws enacted on said date the Republic of Germany created and put into circulation an entirely new currency, with a monetary unit known as the Reichsmark, and stabilized the old currency in which the said policy of insurance was payable on the basis of one million million of old marks being equal to one Reichsmark. The conventional ratio thus established was in accordance with the actual ratio of value. By the terms of said legislation, after the establishment of a new German currency as aforesaid, all contracts payable in the old marks, including the said insurance policy issued to Stadelmeyer, were payable in old marks of the number specified in the contracts, or in the new Reichsmark on the basis of one million million of the former for one of the latter.

X.

Denies the allegations contained in Paragraph X, of said fourth cause of action, and in this connection avers that plaintiff did not suffer damages in the sum of $100.00 or any other sum whatsoever, and that said sum of $100.00 or (55) [81] any other sum whatsoever is a reasonable attorneys' fee, and denies that plaintiff is entitled to recover any attorneys' fee in this cause. (56) [82]

FIRST FURTHER AND SEPARATE ANSWER AND DEFENSE TO THE FOURTH CAUSE OF ACTION CONTAINED IN THE AMENDED COMPLAINT.

For a first, further and separate answer and de-

fense to the fourth cause of action contained in the amended complaint, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things alleged in the foregoing answer, and by reference makes them a part hereof; and further alleges:

II.

That on the 7th day of December, 1903, and for some time prior thereto, and at all times thereafter, the defendant, under and pursuant to the German laws relating thereto, was authorized to transact the business of issuing life insurance policies and other forms of insurance within the German Empire. Theretofore, and on or about May 12, 1901, there was duly enacted and promulgated by the Empire of Germany a law relating to the control and supervision of private insurance companies, the provisions of which were applicable to this defendant, and said laws have not been modified or repealed. A correct English translation of material portions of said law applicable to this defendant and to the issues in this case is hereto attached, marked Exhibit "B," and made a part hereof.

III.

On or about the 3d day of December, 1903, Wilhelm Stadelmeyer, a native born subject of Germany, and then and at all times thereafter a resident of the city of Pforzheim, Baden, Germany, made application to the defendant for a policy of life insurance, which application was issued by

him in Pforzheim, Baden, Germany. In said application he gave his place of birth as Pforzheim, Baden, Germany. Thereafter and pursuant to said application the defendant issued to the said Stadelmeyer, (57) [83] at its office in Mannheim, Germany, policy of insurance numbered 2,508,291, to which reference was made in the foregoing answer, and an English translation of which is attached hereto as Exhibit "E." Said policy was executed and issued by the defendant in Germany, in the German language, was by its terms payable in German currency at the office of the defendant in Berlin. At the time said policy of insurance was issued, and at all times thereafter the defendant was, and now is, domiciled in Germany, authorized there to transact business, and during all of said time has maintained and still maintains an office and agent upon whom service of process issued out of any of the courts of Germany may be made, and during all of said time the defendant was, and now is, subject to the jurisdiction of the German courts and other German civil authorities.

IV.

Prior to the 31st day of December, 1921, there was duly created and organized under the laws of Germany a life insurance stock company called and known as "Kronos Deutsche Lebens-Versicherungs-Aktien-Gesellschaft," hereinafter called the Kronos, which corporation was duly qualified, authorized and empowered by the laws of Germany, and particularly by Article 14 of said Exhibit "B," and the regulations of the insurance authorities thereof,

to engage in the business of issuing policies of life insurance in various forms, to take and receive the transfer of the insurance business of the defendant as hereinafter more particularly alleged, and to undertake the performance of certain outstanding contracts and insurance policies of the defendant, including the policy which had been issued to the said Stadelmeyer. On December 31, 1921, the defendant, conformably to and in compliance with the (58) [84] provisions of German law, and with the approval of the German insurance authorities, an approval given under the provisions of the German insurance law which authorized the transfer, assigned its business in Germany to the said Kronos German Life Insurance Stock Company. Under the contract effecting such transfer defendant transferred to the Kronos about December 31, 1921, all of its German business, policies and contracts, excepting (1) policies payable by their terms in currencies other than German marks, and (2) policies held by citizens and subjects of other countries, and (3) policies held by German citizens and subjects who were not residents of Germany and were paying premiums outside of Germany. Said exceptions did not include the policy and contract of insurance issued to the said Stadelmeyer. The policies so excluded, amounting in number only to 422, were excluded from the transfer by the German insurance authorities for the reason that the business of said Kronos was limited to Germany.

Said Kronos was organized under the authority

and supervision of Germany, and in accordance with its laws, by representatives of German banks and other financial and industrial companies and corporations of the highest financial responsibility, and at all times was, and now is, solvent and financially able to keep and perform all and singular its contracts and undertakings.

At the time of the transfer to the said Kronos, and as a part of said transaction, and in consideration of the obligations hereinafter more particularly referred to, assumed by the Kronos, defendant transferred and turned over to said Kronos, comformably to German law and under the control of the German authorities supervising insurance, the defendant's entire German premium reserve, which included all reserves and assets of the (59) [85] defendant accruing from or growing out of all premiums paid upon contracts of insurance issued by the defendant in Germany, and consisting (1) of cash, (2) German federal, state and municipal bonds, and (3) amounts owing by reason of loans on policies, amounting in all to 114,560,678.08 marks, and, as required by the said Kronos and the said German authorities, a further sum of 2,000,000 marks, denominated a caution," and in addition the said Kronos and the said German supervising insurance authorities required, in connection with said transfer and as a further consideration for the acceptance thereof by said Kronos, that there should be conveyed to said Kronos an additional sum, denominated an extra premium reserve, paid over by defendant and deposited with

said German insurance authorities in order to provide the said Kronos with an additional and extra contingency fund to aid said Kronos to meet any further depreciation in the market value of the transferred and deposited securities so as to enable it to maintain the same dividend scale to policy-holders that defendant would have paid. And this additional sum so required, amounting to 37,107,-137.34 marks, which was in excess of thirty-two (32%) per cent of the entire German premium reserve accruing from and growing out of premiums paid on contracts and policies of insurance issued in Germany, was paid over by the defendant.

In consideration of the premises, and with the approval and consent of the German government and the German insurance authorities having supervision over the matter, and conformably to German law, the said Kronos took over the said business, and insurance contracts of the defendant, including the policy issued to the said Stadelmeyer, and duly notified said Stadelmeyer and all other policy holders of the defendant (60) [86] affected by such transfer on or about December 31, 1921, of such transfer and that said Kronos had taken said business and policies of the defendant over, and would perform the same and be thereafter substituted for the defendant in all obligations existing by virtue of or growing out of said policies of insurance, and in all future dealings with respect thereto, including the acceptance of all premiums thereafter falling due and the payment of all sums to policy-holders thereafter falling due. That in

consideration of the premises the said Stadelmeyer assented to the said transfer and the substitution of the Kronos for the defendant, and agreed thereto, and that the defendant would be and was released from its obligation under said policy, and that he would look solely to the said Kronos for the performance thereof.

Thereafter the said Stadelmeyer dealt wholly with the said Kronos in reference to his said policy, and paid no further premiums to the defendant. That from the time of said transfer defendant had no direction of and took no part with reference to the said policy of insurance or any business in connection therewith in Germany, which was entirely carried on by the said Kronos as its own business, pursuant to German law and subject to the supervision of the German insurance authorities.

That by reason of the foregoing the defendant has been wholly released from any obligation or contract to the said Stadelmeyer by virtue of the policy of insurance issued to the said Stadelmeyer by the defendant as aforesaid, and the said Kronos has been substituted in the place and stead of the defendant. (61) [87]

SECOND FURTHER AND SEPARATE ANSWER AND DEFENSE TO THE FOURTH CAUSE OF ACTION CONTAINED IN THE AMENDED COMPLAINT.

For a second, further and separate answer and

defense to the fourth cause of action in the amended complaint, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things contained in the foregoing answer and in the foregoing first, further and separate answer and defense to the fourth cause of action in the amended complaint, and by reference makes the same a part hereof; and further alleges:

II.

On or about December 3, 1903, at Pforzheim, Baden, Germany, one Wilhelm Stadelmeyer, a native-born subject of and resident in Germany, made application to defendant in Germany for a policy of life insurance, and pursuant to such application, and in consideration of the premiums to be paid as specified in the policy, the defendant issued to said Stadelmeyer, on or about December 7, 1903, at Mannheim, Germany, its policy of insurance No. 2,508,291. Said policy of insurance was written in the German language, and in all respects was to be performed in Germany. An accurate English translation of said policy is attached to this answer as Exhibit "E."

At all times since said policy was issued the said Wilhelm Stadelmeyer was, and now is, a resident in and citizen of Germany. In this connection the defendant alleges that it is informed and believes, and therefore avers the fact to be, that plaintiff is a native born subject and citizen of Germany,

and at all times has been a resident of Germany, and is now a resident of Heidelberg therein.

III.

That Article 9 of the German Insurance Law of May (62) [88] 12, 1901, an English translation of portions of which is hereto attached as Exhibit "B" provides and requires that certain general insurance conditions shall be stipulated and contained in each policy of insurance issued by any life insurance company doing business in Germany, and among the conditions so required by law to be contained in every life insurance policy issued in Germany, including the policy of insurance issued by the defendant to the said Stadelmeyer, is the condition or stipulation making provision for the proceedings in case of dispute arising from the insurance contract, and designating the court competent to deal therewith.

Conformably to said statutory requirements the said policy of insurance issued by the defendant to the said Stadelmeyer contains the following provision, translated into English:

> "LEGAL DOMICILE: For the performance of the present contract, the courts in Karlsruhe alone are competent; as legal domicile for the Company there is stipulated its office at Mannheim, and for the insured and the beneficiary the place stipulated in the application for the insurance."

The stipulated place of residence and domicile of

the insured (there being no other beneficiary named) in said application was Mannheim.

IV.

At the time said policy of insurance was issued and at all times thereafter the defendant maintained, and still maintains, an office and General Representative and authorized agent at Karlsruhe, Germany, upon whom service of process issued out of any of the courts of Germany may be made in behalf of and binding upon the defendant; and during all of said times the defendant was, and now is, subject to the (63) [89] processes and the jurisdiction of the German courts sitting at Karlsruhe and the German courts sitting at Mannheim, and generally to the German courts of the German Empire and its successor, the Republic of Germany. During all of said times the said German courts were, and now are, courts of general and competent jurisdiction, duly constituted and created under German law, and at all times were, and now are, courts of general and competent jurisdiction, duly constituted and created under German law, and at all times were, and now are, open and functioning, and ready and competent to take jurisdiction with respect to any controversy, dispute or action on or arising out of the said policy of insurance and the enforcement of any right or claim based thereon which is justiciable in character.

During all of the times herein mentioned, and now, and in respect of the performance of said policy of insurance, or any dispute or disputed claim thereon, or any suit or action based on or

arising therefrom, and brought in Germany, the courts at Karlsruhe have exclusive jurisdiction and no other German court has or would have any right, power or jurisdiction in respect to such matters, or to pronounce any judgment or decree whatsoever upon or regarding the rights or obligations of either party to said policy or any other party claiming any rights thereunder, that would be recognized or have any force or validity in Germany. And neither the executive, administrative nor judicial authorities of Germa*hy* now or at any time lawfully could or would admit or recognize the right or jurisdiction of any court in Germany or in any other country other than the courts of Karlsruhe to pronounce any judgment or decree in respect of any dispute or controversy arising out of the policy. (64) [90]

And in this connection the defendant further alleges that any judgment pronounced by the courts of Oregon, or pronounced by any court other than the German court at Karlsruhe, would not and will not be recognized by, and would not and will not be given any force or effect whatsoever in Germany, either under the laws o*r* Germany or the principles of international comity, and will not and would not in anywise impair or take from the plaintiff a right to bring an action in the German courts at Karlsruhe against this defendant upon the insurance policy. That provisions in contracts of insurance similar to those hereinbefore set forth with respect to the German courts having jurisdiction of disputed claims arising on the said Stadelmeyer policy, have been interpreted and the effect

thereof determined by competent courts of Germany in sundry decisions, among others, that of Wilhelm Rinck against the New York Life Insurance Company, decided by the Berlin Court of Appeals on or about November 2, 1927. Said action was upon a policy of insurance issued by the defendant, which contained a clause or condition similar to the provisions herein set forth and which specified certain courts as having jurisdiction of disputes and lawsuits arising under the policy. The said Court of Appeals is a court of record, with general jurisdiction, and there is no higher court in Germany except the Supreme Court of the Reich, and the decisions of said Court of Appeals are of binding force and effect under the laws of Germany and throughout the whole of Germany unless and until overruled and set aside by the Supreme Court. Said decision has not been overruled or set aside by the Supreme Court. By said decision it was held and adjudged that under the laws of Germany at the time the policy of insurance involved in the said Rinck case was issued, and at all times thereafter, being (65) [91] the aforementioned German insurance law of May 12, 1901, and the provisions of the policy, no action upon a policy of insurance containing such provisions could be prosecuted or maintained in any court, foreign or domestic, except the court specified in the policy, and that no other court had any power or jurisdiction to entertain such suit or action or pronounce judgment therein, and that no judgment pronounced by any other court had any force or effect whatsoever.

To the same effect are the decisions in the Dessau case, rendered by the Landsgericht (District Court) of Berlin on May 17, 1924, and the Daunnert case, rendered by the said court on June 28, 1928, and in the Gorgas case, rendered by the Court of Appeals sitting in Berlin, on January 9, 1929.

V.

That by reason of the matters and things hereinbefore alleged this court has no jurisdiction over the subject matter and in any event should not take or exercise jurisdiction herein or pronounce or undertake to pronounce any judgment for or against either party to this action, but should abate and dismiss the action. (66) [92]

FIRST FURTHER AND SEPARATE ANSWER AND DEFENSE TO EACH AND ALL OF THE CAUSES OF ACTION IN THE AMENDED COMPLAINT.

For a first, further and separate answer and defense to each and all of the four causes of action in the amended complaint contained, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things contained in each of the answers to the causes of action set forth in the amended complaint and in the several separate answers and defenses to each of the causes of action contained in the amended complaint, and by reference makes them a part heerof; and further alleges:

II.

That at all times herein mentioned the defendant

was, and now is, a corporation organized and existing under and by virtue of the laws of the State of New York, and in 1902, and theretofore and thereafter, and until about the first of August, 1914, the defendant issued policies of life insurance in various forms, within the jurisdiction and territorial limits of the Empire, afterwards the Republic of Germany.

III.

That on or about May 12, 1901, there was duly enacted by the legislative authority of the Empire of Germany certain laws pertaining to insurance companies doing business within the said Empire, including and applicable to this defendant. Said laws have not been repealed and are a part of the laws of the Republic of Germany, which succeeded the Empire of Germany. Said laws were written and enacted in the German language, and a substantial English translation of portions thereof, having application to this defendant, and to the issues involved in this cause, is hereto annexed, marked Exhibit "B," and hereby made a part hereof. Defendant was (67) [93] authorized and admitted to transact a life insurance business in Germany, and at all times fully and duly complied with all of the provisions of said laws and with all laws, decrees and regulations issued pursuant to authority of the German government in relation to the defendant and its said business.

IV.

That at the time each of the applications de-

scribed in the amended complaint was made, and each of the policies therein referred to was issued, each of the said insured, as well as the plaintiff, was a resident in, subject and citizen of the Empire of Germany and later its successor the Republic of Germany, and still is such resident and citizen of Germany. Each application and each policy aforesaid was written in the German language, each policy was issued in Germany by the General Agents and Representatives of the defendant there residing and domiciled in Germany, and each policy of insurance was delivered to the insured in Germany and was made payable in the mark currency of Germany, and in every other respect was performable therein.

That at all times since each of said policies was executed and issued by this defendant as aforesaid, the defendant has kept and maintained, and still keeps and maintains an office and an authorized agent and general representative at Berlin, Germany, upon who might be and may be served summonses and all other judicial processes issued out of the German courts, as well as other agents and other representatives in Germany upon whom service of process issued out of the court of Germany may be lawfully made. And during all of said times the defendant was and now is subject to be summoned into and within the jurisdiction of the courts of Germany. (68) [94]

V.

That at the time each of said policies of insurance was applied for and issued, and for many

years thereafter, the mark currency referred to in each of said applications and each of said policies was the mark currency of the Empire of Germany, and afterwards its successor, the Republic of Germany.

From about December 4, 1873, until the outbreak of the World War in 1914, the currency of the German Empire was defined and established by Articles I, II and III of the German laws of December 4, 1871, and Article XIV of the German Monetary Law of July, 1873, and the German Monetary Law of June 1, 1909.

On or about August 4, 1914, the legislative authority of the German Empire duly enacted a law amending the coinage and monetary laws of Germany then existing. Said latter law was published as the Law of August 4, 1914, in the Reichsgesetzblatt, page 326, and contained these provisions, among others:

"Paragraph 1:

Until further notice the provisions of section 9, paragraph 2, sentence 2 and 3 of the Coinage Act of June 1, 1909 (Reichsgesetzblatt, p. 507) are amended to the effect that federal treasury notes and notes of the Reichsbank can be issued instead of gold coin.

"Paragraph 2:

The Federal council is authorized to determine the date on which the provisions referred to in paragraph 1 of the present Act again become effective.

"Paragraph 3:

This Act becomes effective on the date of the publication."

And on August 4, 1914, the legislative body of the German Empire enacted a law concerning federal treasury notes, which was published on or about August 4, 1914, in the Reichsgesetzblatt 1914, at page 347, and contained the following provisions, among others: (69) [95]

"Paragraph 1:

Federal treasury notes are legal tender until further notice.

"Paragraph 2:

Until further notice the Reichshauptkasse (Note: the Central Imperial pay office) is not obligated to redeem the federal treasury notes nor is the Reichsmark obligated to redeem its notes.

"Paragraph 3:

Until further notice the private note banks are authorized to utilize notes of the Reichsbank for the redemption of their notes.

"Paragraph 4:

The Federal Council is authorized to determine the date on which the provisions of paragraphs 1 and 3 of the present Act becomes obsolete.

"Paragraph 5:

This Act becomes effective with regard to paragraphs 2 and 3, beginning July 31st, 1914,

and in all other respects on the date of its publications."

That the mark currency provided for in the various German laws hereinbefore referred to, and which continue to be the currency of the German Empire, and its successor, the German Republic, until after the German Monetary Act of August 30, 1924, became effective, will be hereinafter referred to as the old mark. The currency provided for by the said Monetary Act of August 30, 1924, the unit of which was and is the Reichsmark, will be hereinafter referred to as the new mark.

VI.

During the World War and subsequent thereto and as a consequence thereof, and the resulting impairment of German credit and currency inflation, the said old mark greatly depreciated in value and purchasing power. This depreciation resulted in a corresponding decrease or depreciation in the value of all notes, bonds, mortgages and other securities and investments payable in marks, which included practically all of the assets of the defendant in Germany, and there invested, as required by the German insurance authorities as a condition (70) [96] to its right to transact business in Germany, largely in German national, state and municipal bonds and other securities, all payable in the old mark. Said old mark continued to be the German currency in which all mark contracts were payable until after the enactment of the Monetary Act of August 30, 1924. Prior to the enact-

ment of said law and its companion Bank Act hereinafter referred to, all obligations theretofore created and payable in marks, including any and all obligations of either party to this action under or based upon the said policy of insurance, were payable and lawfully payable, at the option of either party to said contract of insurance, in the old mark in its depreciated value, that is, by paying the number of marks specified in the contract. And neither party to said contract of insurance had any other right or claim by reason of the provisions of said contract of insurance, or any other right or claim whatsoever against the other, save such as might be given as a matter of grace or public policy by the German courts pursuant to Section 242 of the German Civil Code which is hereinafter referred to.

VII.

By August, 1924, the old mark had depreciated to such an extent that it was practically valueless, and all securities, notes and obligations payable therein, including said policy of insurance, and including the assets of the defendant in Germany, had suffered a like depreciation. On August 30, 1924, the Republic of Germany duly enacted a new monetary law which provided for and created an entirely new currency, called the Reichsmark, and made it legal tender currency of Germany. As hereinbefore stated, the said new currency is herein referred to as the new mark. (71) [97]

Article I of said Monetary Act of August 30, 1924, translated from the German language into the English language, reads as follows:

"The currency of the German Reich is a gold currency. Its unit of account is the Reichsmark, which is divided into one hundred Reichspfennig."

Article V of said law, translated from the German language into the English language, reads as follows, in part:

"Insofar as a debt is payable in marks of old currencies, the debtor is entitled to effect the payment in such manner that one million millions of marks is made equal to one Reichsmark."

Said law has not been repealed or modified.

On August 30, 1924, Germany further duly enacted a Bank Act, which was published in the Reichsgesetzblatt of 1924, Part II, page 235 et seq., and Article 3 of said Bank Act, translated from the German language into the English language, reads substantially as follows:

"The Reichsbank is bound to call up the total amount of its old notes in circulation and to exchange them for Reichsmarks. One million millions of marks of former issues shall be replaced by one Reichsmark. The redeemed notes shall be destroyed. Detailed regulations for the calling up of the old notes and for the delays to be fixed for their delivery and cancellation shall be determined by the Directorate of the Reichsbank."

That Article I of the first decree for the carrying in effect of the Monetary Law (Erste Verordnung zu Durchfuhrung des Munzbesetzes) of October 10,

1924 (published in the Reichsgesetzblatt of 1924, Part II, page 383), provides that one million millions of old marks is made equal to one new mark, that is, one Reichsmark.

VIII.

The courts of Germany in construing and determining the effect of said monetary and banking laws of August 30, 1924, and the said Decree for carrying the same into effect, (72) [98] and the prior laws hereinbefore referred, have determined and declared that all contracts made in Germany and payable in German currency, including policies of insurance similar to those described in the amended complaint herein, are subject to and are to be construed according to German law, and that any person seeking judicially to recover upon any such contract, including any such insurance policy, if the contract was entered into prior to August 30, 1924, and therefore payable in the old mark, can only recover an amount of the new mark (Reichsmark) created and issued under the Monetary Laws of August, 1924, upon the basis of one new mark (Reichsmark) for each million million old marks called for in any such contract, and that the relief provided to certain enumerated classes of creditors under the Revaluation Law of Germany enacted July 16, 1925, cannot be given by any court or other judicial tribunal, but is within the exclusive jurisdiction of the administrative authorities and tribunals constituted and set up by the said Revaluation Law. As hereinafter more fully alleged, each of the policies of insurance described in the amended com-

plaint is embraced within the provisions of the said Revaluation Law.

The said law of August 30, 1924, stabilized the old mark on a ratio of one million million thereof to one new mark (Reichsmark), and the conventional ratio thus established corresponded with the actual ratio of value at the time. In this connection, and for the purpose of showing the holdings of the German courts conformably to the foregoing allegations, the following decisions are referred to and copies thereof annexed:

(a) Decision of the German Supreme Court of June 23, 1927, reported in Volume 118 of the Official Reports of the (73) [99] Decisions at pages 370 et seq., an accurate English translation of which is attached hereto as Exhibit "F."

(b) The decision of the Supreme Court in Civil Cases of June 6, 1928, an accurate English translation of which is attached hereto as Exhibit "G."

(c) The decision of April 15, 1929, of the Court of Appeals of Munich, in Protective Association of Foreign Policy Holders against Swiss Life Insurance Annuity Institute of Zurich, an accurate English translation of which is attached hereto as Exhibit "H."

There are many other German decisions to the said effect.

IX.

As heretofore alleged, all claims, including life insurance policies, not falling within the provisions of the Revaluation Law, entered into prior to August, 1924, and payable in the German mark currency authorized and in circulation prior to that

time, may be paid and discharged according to German law by payment on the basis of one new mark (Reichsmark) for each million million old marks of the currency called for by the contracts out of which any such claims arose. All of the policies described in the amended complaint herein are within the provisions of said Revaluation Law, so that the only remedies available to the holder of said policies, or either thereof, would be and is to recover in new mark currency (Reichsmarks) the value of the number of old marks called for by said insurance policies, upon the basis of one million million of the latter to one of the former, in which event the recovery would be so small that no court would pronounce judgment therefor; or seek (74) [100] relief provided for by the Revaluation Laws, in which event no co*uld* would have jurisdiction, but the matter is and would be exclusively within the control and jurisdiction of the administrative tribunals provided by the law.

As to claims not falling within the said Revaluation Laws and payable in German currency, the claimant has under German Law the technical legal right to recover judgment in a judicial proceeding for the value of the old mark currency called for by the contract, converted into the new mark (Reichsmark) on the basis of one of the latter to one million million of the former, and in addition thereto with respect to certain classes of claims the German courts have sometimes given a species of relief based on Section 242 of the German Civil Code. This section, translated into English, reads substantially as follows:

"The debtor is obliged to perform in such a manner as faith and credit with regard to custom requires."

Under this statutory provision the German courts, not being restrained by constitutional limitations, or controlled by precedent, or restricted by rules or principles of law as are the American courts, adopted the practice, as a matter of alleged public policy, of taking into account, in an action upon any contract or obligation, after the old mark had greatly depreciated, the necessities of the one party to a contract and the capacity of the other to pay; the economic condition of Germany generally, and particularly of the parties to the litigation and their dependents; the public interest in the matter, the loss or gain of either party to the obligation, having regard to the consequences of the war; and many other factors which the German courts considered as having relation (75) [101] to the public policy of that country. And upon these considerations the said German courts would, and did, in certain classes of cases, fix the amount which the debtor should pay and the creditors should receive, without any regard to the terms of the contractual relation upon which the action was based. That said law and the said practice in the German courts were and are peculiar to its jurisprudence and the judicial system and authority of that country, and the consideration upon which the German courts act, and the varying relief given, are not within the competency of an American court to consider or give. That plaintiff at all times was and now is a resident in and citizen and subject of Ger-

many. That by reason of the aforesaid facts, if the plaintiff were otherwise entitled to recover anything, the amount of his recovery would and should be limited to the value of the number of old marks called for in the policies of insurance mentioned herein, upon the basis of one million million thereof for one new mark (Reichsmark), the latter being worth in the open market approximately 23.85 cents in American currency, and such rights as he might have under the valorization laws of Germany and decrees issued thereunder, copies of English translations of certain applicable portions thereof being attached hereto as Exhibits "I," and "J," and hereinafter referred to, of which the administrative body set up thereunder has exclusive jurisdiction. (76) [102]

FOR A SECOND FURTHER AND SEPARATE ANSWER AND DEFENSE TO EACH AND ALL OF THE CAUSES OF ACTION IN THE AMENDED COMPLAINT.

For a second, further and separate answer and defense to each and all of the four causes of action in the amended complaint contained, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things contained in each of the answers to the causes of action set forth in the amended complaint and in the several separate answers and defenses to each of the causes of action contained in the amended complaint, and to the first, further and separate answer and defense to each and all of the causes of action contained in the amended com-

plaint, and by reference makes them a part hereof; and further alleges:

II.

Alleges that on July 16, 1925, there was duly enacted by the Republic of Germany a law entitled "Gesetz uber die Aufwertung von Hypotheken und anderen Auspruchen," published in the issue of July 17, 1925, of the Reichsgesetzblatt, Teil 1, Number 31 of 1925, a correct English translation of the title thereto being "Law as to the rating-up (valorization or revaluation) of mortgages and other claims," generally known and called the Valorization or Revaluation law. A correct English translation of Sections 59, 60 (subsections 1 and 2), 61 and 62 of said law is attached hereto, marked Exhibit "I," and here referred to and made a part of this answer. On November 29, 1925, the Minister of Justice of the Republic of Germany, being duly authorized so to do, duly promulgated a decree for the carrying into effect of said Revalorization Law, entitled "Durchfuhrungs verordnung sum Aufwertungsgesetze," published in the issue of December 5, 1925, of the Reichsgesetzblatt, Teil 1, Number 51 of 1925, a correct English (77) [103] translation of Sections 95, 96, 97 (subsections 1 and 3), 100, 101 (subsections 1 and 3), 102, 103, 104, 105, 111, 114 and 115 of said decree is hereto attached, marked Exhibit "M," and is hereby referred to and made a part of this answer. Said decree of November 29, 1925, has the force and effect of law within the German Republic. Said law of July 16, 1925, and said decree of November 29, 1925, are

hereinafter sometimes referred to as said Revalorization laws.

III.

That the defendant at all times was, and now is, a supervised company under the said insurance laws and valorization laws, and defendant was at all times subject to the direction and control of the German Office of Supervision for Private Insurance with respect to all funds collected from premiums on policies issued in Germany, the disposition of all such funds, the character of investments to be made thereof, and in all other respects, and in accordance with such control and direction and at all such times defendant was required to and did deposit with said office all premium reserves on all of the outstanding insurance policies that were issued within Germany, and in addition was required to and did deposit with said German authorities, from moneys derived from sources other that German policies and German business, a large sum, and invested all thereof in like manner and in German securities payable in the old mark. That at the time of the outbreak of the World War defendant had invested in Germany, principally in bonds and other securities issued by the German government and by the German states and municipalities, regarded then as the highest type of German securities then available, and which investments were approved by the said German authorities, all (78) [104] of the aforesaid funds; that during the World War, and due to the heavy losses growing out of the war mortalities, defendant sent from

other than German courses, to Germany, a large sum to meet such losses.

That the Federal Office of Supervision for Private Insurance, long prior to the commencement of this action, rendered a decision holding that defendant was and is a supervised company within the meaning of the insurance and the valorization laws. Thereafter an appeal from said decision was taken to the German Insurance Board, as provided by the laws of Germany, which on October 25, 1928, rendered a decision holding that the defendant was a supervised insurance company within the meaning of the said valorization law, and the said decree. A true copy of an English translation of said decision is hereto annexed as Exhibit "K," and hereby made a part of this answer. Thereafter, and as provided by Section 74 of the German law relating to private insurance companies, an appeal was taken to the Appellate Division thereby set up to hear such appeals, and on February 13, 1929, the said Appellate Division affirmed the decision of the said Federal Superintendent's Office of Private Insurance and the decision of the said German Insurance Board. A true English translation of the decision of said Appellate Division is hereto annexed, marked Exhibit "L," and hereby made a part hereof. The said last-named decision under German law is final and no appeal can be taken therefrom.

IV.

That each of the policies of insurance hereinbefore referred to is included within the contracts

and obligations covered by said valorization laws and said decree of November (79) [105] 29, 1925. That all of the funds and assets of the defendant aforesaid are now being administered by and under the direction of the said German insurance authorities in accordance with the said laws.

By the provisions of Section 62 of the said valorization laws there is reserved to claimants payable in old marks, who do not come under the provisions of said law, the remedy of recovery to the number of old marks specified in the contract or obligation, or the conversion value thereof in the new mark on the basis of one of the latter for one million million of the former, and such other and further relief as might be given under Section 242 of the German Civil Code to claimants entitled to the benefit of that Act, and no other rights of actions or remedies. For such claims, however, as do come within the said valorization law, including the claims upon which this action is based, the claimant's right of recovery is exclusively under the said law, the determination of which is exclusively with the German insurance authorities, and is not such a right as is enforceable either in the courts of Germany or the courts of any other country. This has been the construction and interpretation given to said laws and decrees promulgated thereunder by the administrative and executive branches of the German government and by the German courts, and is the true interpretation of said laws.

In this connection reference is made to the following decisions of the German courts:

(a) The decision of June 8, 1928, of the Supreme Court of Germany (the highest Court of the German Reich) in the case of Schroter *versus* Alte Gothaer Lebens-Verscherungs Bank, an accurate English translation of which is attached hereto and (80) [106] marked Exhibit "M."

(b) The decision of April 15, 1929, of the Court of Appeals of Munich, in Protective Association of Holders of Foreign Insurance Policies *versus* Swiss Life Insurance Annuity Institute of Zurich, a copy of which is attached to this answer as Exhibit "H."

(c) The decision of the German Court of Appeals of Berlin of July 11, 1928, in the case of Daunert *versus* The Guardian Life Insurance Company of New York, an accurate English translation of which is attached hereto as Exhibit "N."

(d) The decision of July 27, 1926, of the Landsgericht (District Court) of Hamburg, in the case of Blembel *versus* New York Life Insurance Company, in which it was held that a claim upon an insurance policy, substantially similar in its terms to those involved in this action, was governed by the Revaluation Law and Enforcement Ordinance, and that an action thereon in the courts must be dismissed. Among other things the Court said:

> "In so far as the claims for revaluation fall under the Revaluation Law, only the Trustee, and not the defendant is the party against whom the claim may be prosecuted. For under the provisions of the Ordinance, the Trustee has to ascertain the insurances concerned

in a revaluation; his position with regard to the revaluation fund is very much like that of a public receiver in bankruptcy proceedings; and, therefore, the claim has to be asserted against him.

* * * * * * * *

"The amount insured is specifically fixed at Marks 100,000. The provisions of the Revaluation Law, therefore, apply thereto. As has been said above, the plaintiff can in so far prosecute his claim against the Trustee only, as has been appointed or is to be appointed." (81) [107]

(e) The decision of April 25, 1928, of the Landsgericht of Berlin, in the case of Nagel *versus* New York Life Insurance Company. There an application was made by the plaintiff to be allowed, as a poor party, to sue the New York Life Insurance Company upon a policy of insurance. The application was refused, the Court saying:

"The application of the petitioner to be granted the right to sue as a poor party is dismissed because the intended lawsuit appears to have no prospect of success. The opposing party is a foreign Insurance Company under the supervision of the Reich and therefore a claim for revaluation lies only within the purview of and in accordance with the provisions of the Revaluation Act."

(f) The case of Schubert *versus* New York Life Insurance Company, decided February 15, 1927, by the Landsgericht of Berlin. This was an

action upon a life insurance policy, and it was held that it could not be maintained as the relief could only be sought through and under the Revaluation law.

(g) The decision in the case of Gorgas *versus* New York Life, entered on January 9, 1929, and the decision in the cases of H. W. S. Brauer and Herman Gros against the New York Life Insurance Company, of the Supreme Court of Appeals of Berlin, entered on January 31, 1928, and the supplemental opinion in the same matter in the same Court on March 8, 1928.

(h) The decision in the Landsgericht of Hesse, in Darmstadt, entered on February 3, 1928, in the case of Hecht *versus* New York Life Insurance Company, in which it was held that the New York Life Insurance Company was a supervised company, that the claim was upon a policy of insurance which fell within the aforesaid Revaluation law, and that the remedies of the policy-holder must be sought under the Revaluation law. This decision was affirmed on December 18, 1928, by the Hessian Court of (82) [108] Appeals at Darmstadt.

V.

Pursuant to the provisions of said Revaluation law and Enforcement Decree, and as the result of discussions and negotiations carried on between the defendant and the German government, an agreement was reached on February 12, 1930, with regard to the amount of the contribution to be made by the defendant to the revaluation stock or fund to be administered by the Trustee under said

Revaluation law for the exclusive benefit of the holders of German policies issued by the defendant, including the policies mentioned in the amended complaint. That by the terms of said agreement the defendant is assessed and is to contribute from its general funds—that is, funds and property other than the premium reserves upon German insurance policies and other funds turned over by defendant to Kronos as hereinbefore stated—an amount necessary to enable a revaluation of fifteen (15%) per cent of the gold mark value of each insurance policy, including the policies described in the amended complaint. Attached hereto and marked Exhibit "O," is an accurate English translation of the German Federal Insurance Department of Private Insurance, having jurisdiction of the matter, in which said agreement, and the basis and reasons therefor, are stated. That it is the purpose of the defendant, and it is now taking the necessary steps, to conform to said agreement and said decision.

VI.

That by reason of the matters and things herein alleged, this action shold be dismissed and abated, and plaintiff remitted for the enforcement of his rights and remedies to the courts and other tribunals of Germany having jurisdiction in the premises. (83) [109]

FOR A THIRD FURTHER AND SEPARATE ANSWER AND DEFENSE TO EACH AND ALL OF THE CAUSES OF ACTION IN THE AMENDED COMPLAINT.

For a third, further and separate answer and

defense to each and all of the four causes of action in the amended complaint contained, the defendant:

I.

Reaffirms and re-alleges all and singular the matters and things contained in each of the answers to the causes of action set forth in the amended complaint and in the several separate answers and defenses to each of the causes of action contained in the amended complaint, and to the first and second further, and separate answers and defenses to each and all of the causes of action contained in the amended complaint, and by reference makes them a part hereof; and further alleges:

II.

Defendant further alleges that each of the insurance policies on which this action is based was applied for and entered into in Germany; that all payments thereunder were, by the terms of each of said policies, required to be made in the mark currency of that country; that the plaintiff at all times was and now is a citizen, subject and resident of Germany. The defendant is engaged in the transaction of business in Germany, and was at all times mentioned in the pleadings in this case, and during all of said times was and now is subject to processes of and may be sued in the German courts.

The administrative machinery provided for and set up in connection with and for the administration of the valorization laws aforesaid, is now at work and functioning. The Courts of Germany are open and functioning. The plaintiff can have

a fair and impartial hearing of his alleged claims and rights upon said policies of insurance, either in the German courts (84) [110] or before said administrative body.

There are no available compilations of German laws, or reports of decisions of German courts issued in the English language. There is no evidence to be had or found in Oregon relating to this case, and no witnesses in Oregon who can give testimony in the case. All witnesses in and all evidence material to the case are in Germany. The transactions involved in this case occurred in Germany, and were carried forward in the German language, in which language all documents, correspondence and the like connected with the transactions involved in this case were written.

III.

A consideration of this case upon the merits must necessarily put upon this court the burden of familiarizing itself with the jurisprudence of Germany, which involves the examination into and study of many statutory provisions, including Section 242 of the Civil Code; several monetary and banking laws in force in Germany prior to the World War; legislation touching the same subject enacted by Germany during and after the war; the legislation resulting in the practical demonetization of the old mark and the creation of a new mark in 1924; the valorization acts of 1925 and the regulations and decrees passed and put into force under these several acts by executive and administrative officers of the German government; the

extent of the power of the executive and administrative officers to issue such regulations and decrees; the legal effect thereof; also the existence and scope of the judgments of the courts of Germany; the actions, administrative policy and opinions of the administrative and executive officers construing the written and unwritten law of Germany; the usages, (85) [111] customs and unwritten law of Germany; the writings of German jurists and other sources of information.

IV.

The rights of plaintiff, if any, can be tried and determined expeditiously and with very little expense by German tribunals. Should a trial of this case be had in this court the defendant would be put to great expense and inconvenience and be greatly handicapped in the making of its defense because it cannot by any process of this court compel the production of evidence, or the attendance of witnesses or the giving of testimony by persons having knowledge of material facts. This court should not retain jurisdiction, but should abate and dismiss this action and remit the plaintiff to his remedies before the courts or other tribunals of Germany.

WHEREFORE, defendant prays that plaintiff take nothing by this action and that defendant have and recover from plaintiff its costs and disbursements herein.

HUNTINGTON, WILSON & HUNTINGTON,

CLARK & CLARK,

Attorneys for Defendant. (86) [112]

TRANSLATION.

EXHIBIT "A."

From: German
Into: English

No. 1554478

NEW YORK LIFE INSURANCE COMPANY.

The "New York" Life Insurance Company by this policy insures

Age 37 Years

the life of Mr. Ludwig Schnell residing at Breslau, Prussia for a period of 20 years beginning from December 31, 1904, at noon, for the amount of 9,000 Marks D. Rwg. and the Company

Annual premium M477.90

Extra 45.00 M522.90

Mks.D.Rwg.

HEREBY OBLIGATES itself to pay said amount in its Office in Berlin to the legal representative of the insured at the death of the above named insured while this policy is in force.

If however, the insured survives the maturity of the insurance, that is the 31st of December Nineteen hundred and twenty four the amount of 9,000 Marks D. Rwg. will be paid to the insured or his legal successors, and this policy at the same time will cease and determine [113]

This Policy is Issued

First: On the basis of the written application made to the Company.

Second: In conformity with the General Insurance Conditions set forth on the second and third pages of this policy of which the insured declares having received full knowledge and which he acknowledges as an essential part of the present con-

tract as though they were recited at length above the affixed signatures.

Third: In consideration of the first annual premium of 522.90 Marks D. Rwg, having been paid to the Company and under the assumption that a like payment be made in advance on the 31st December of each year during the continuance of this policy, until 20 full year's premiums have been paid.

Revised:

Fourth: With annual participation in profits, as set forth hereinafter.

In Witness Whereof the present contract has been issued by The New York Life Insurance Company and signed by its President, its Secretary, and its General Manager for Europe or its General Secretary for Europe or its Substitute Secretary for Europe on the 7th of February of the year One Thousand nine hundred five.

President:
JOHN A. McCALL.

Secretary:
SEYMOUR M. BALLARD.

Endowment 20 Years

Director General for Europe:
W. E. INGERSOLL.

Annual Participation in profits

Chief Representative for Germany:
G. NIMPTSCH

Berlin, February 7, 1905. [114]

Liberal Policy.

A.————————,
Secretary for Germany

Prussia

99–504

GENERAL INSURANCE CONDITIONS.

I. POWERS OF THE AGENTS.

No agent is authorized, in the name of the Company, to make this or any other insurance contract or to modify it or to keep it from lapsing, to extend the term for the payment of the premium or to bind the Company through any promises or through the acceptance of any communications or declarations. This authority is vested exclusively in the President, the First or Second Vice-President, the Actuary or the Secretary of the Company and is delegated only to the General manager for Europe, the General Secretary for Europe, or the Substitute Secretary for Europe.

II. PAYMENT OF THE FIRST PREMIUM.

The present policy takes effect only after the first premium has actually been paid to the Company and has been accepted by it while the insured is living and in good health.

III. FRACTIONAL PAYMENT OF PREMIUMS.

The premium is always to be considered as payable annually in advance. If however by agreement semi- or quarter-annual payment of premiums has been stipulated, the part of the year's premium that may have remained unpaid at the death of the insured will be considered an indebtedness to the Company under the contract and will be deducted from the amount of insurance due.

IV. SUBSEQUENT PREMIUMS.

The premiums are payable at the Office of the Company in Berlin if no other agreement has been made in writing. However, the premiums may likewise be paid to persons authorized to collect them, but always against receipts bearing the signature of the President, the First or [115] Second Vice-President, or the General Manager or General Secretary for Europe.

V. GRACE PERIOD FOR THE PAYMENT OF THE PREMIUMS.

A thirty-day grace-period is granted for the payment of each premium with the exception of the first. During that grace period the unpaid premium will be considered an indebtedness to the Company, which in case of the death of the insured within the said thirty day period, will be deducted from the insurance amount payable.

VI. NON-PAYMENT OF A PREMIUM.

If a premium is not paid within the thirty days grace period, the insurance ceases by right.

In consequence of such lapse, the premiums paid to the Company are retained by it, if three full years premiums have not been paid.

The policy may be reinstated, provided the insured can prove to the satisfaction of the Company, within six months following the non-payment of a premium, that he is in a condition required for the issuance of a new insurance, and pays the premiums

in arrears with late interest at the rate of 5% per annum.

Should the policy lapse after it has been in force three full years, the insured may avail himself of the provisions set forth in Article VII and in the following Table of Reduced Insurance, Extended Insurance or Cash Surrender Value.

VII. NON-FORFEITURE.

If at the time of lapse the policy has been in force not less than three full years, the same may:

(A) be converted, by endorsement, into a paid-up policy for a reduced amount of insurance, as stated in the following table; or

(B) be purchased by the Company for cash for a sum, the amount of which is likewise stated in the following table.

In either case the insured must, within six months following the due date of the unpaid premium, notify the Company in writing of his choice and return the policy. If the policy has not been reduced or surrendered for its cash value as stated above: [116]

(C) the insurance will automatically be extended for the amount of Marks 9,000 D.Rwg. for the period set forth in the table below, counting from the day to which the premium has been paid in conformity with the contract. The insurance terminates at the end of the said period; if, however, the insured is then still living the amount set forth in paragraph "insurance extension" will be paid in cash.

The paid-up insurance for a reduced amount and

the extended insurance, as specified above, are subject to the conditions of the present policy, however without payment of premiums, without rights to loans, and without participation in the profits, as specified in Article X following.

If at the time of the non-payment of a premium there is any indebtedness to the Company under the policy, such indebtedness (should the insured wish to avail himself of the above provisions of reduction or of the extended insurance) must be repaid to the Company within 30 days following the due date of the said unpaid premium. If such indebtedness has not been repaid, the Company shall consider the policy as automatically lapsed and no longer in force by paying to the insured the cash surrender value, mentioned in this Article under "B," after deduction of all sums due as to principal, interest and expenses. In this latter case the unpaid premium is not considered an indebtedness to the Company.

VIII. WAR RISK.

The present policy covers the War Risk without payment of an extra premium.

IX. INCONTESTABILITY.

Should the death of the insured occur after the present policy has been in force one full year counting from the date of its issue by the Company, the latter cannot contest the payment of the insured amount for any reason whatsoever, provided the premiums have been paid regularly. [117]

X. CASH LOANS ON THE PLEDGE OF THIS POLICY.

After this policy has been in force three full years the Company will grant advances as loans against the value of the said policy. These loans will be granted by the Company, on request of the insured, within the thirty day period, mentioned above in Article V, counting from the beginning of the Fourth or any subsequent insurance year. The loans are subject to the conditions of the loan agreement then in use by the Company. The insured will have the right to specify the amount of the loan to be granted, provided however, that the said amount together with any prior loan then outstanding on the policy, shall not exceed the amount shown in the following table.

Interest at the rate of 5% per annum is to be charged for the loans.

XI. PROFITS.

The present policy is issued, as specified on the first page, with annual participation in the profits of the Company. The said profits are distributed on the anniversary of the policy and may:

A. be withdrawn in cash; or,

(Page 3 of policy)

B. be applied to increase the original amount of insurance.

The profits of the Company under insurances issued with annual participation in profits are ascertained in the following manner: At the end of each year the calculation of the profits and losses for the

totality of policies issued with annual distribution of profits, will be made. The part of the general expenses of the Company which, according to this calculation, is to be charged against policies with annual distribution of profits, is determined in the following manner: the totality of the expenses are divided in two classes, namely (a) the share of the expenses to be borne by the premiums of the first year exclusively and (b) the expenses to be borne by the premiums of the subsequent years; the policies with annual participation in profits are charged with such proportionate part of the total amount of the expenses of the first class, as obtained from the proportion between the [118] premiums of the first year on policies with annual participation in profits and the first year's premiums of the total business of the Company; a like proportionate part of the total amount of the expenses of the second class is charged as obtained from the proportion between the premiums of the subsequent years on policies with annual participation in profits and the premiums for the subsequent years of the total business of the Company.

After the amount of profits for the year relating to policies with annual participation in profits has been ascertained according to this calculation, the Board of Management of the Company may apportion certain sums, taken from the said profits, to a special reserve for instance, reserve fund for war risk, fluctuations in mortality), provided however that the total amount of these sums in the course of a year does not exceed one fourth of the total

profit. The balance of the year's profits (which can never be less than three fourths of the total profits) is thereupon distributed, in cash, among the holders of policies with annual participation in profits on the anniversary dates of such policies in the year following. The share of the various policies in the totality of the dividends apportioned is as follows:

Policies that have been in force one year participate in the proportion of the annual premium;

Policies that have been in force two years participate in the proportion of the annual premium, increased by one sixth;

Policies that have been in force three years participate in the proportion of the annual premium, increased by two sixths and so forth, always increased by one sixth for each subsequent year while the policy is in force.

Policies payable at death with limited payment of premiums on which the premiums have not as yet been paid in full receive their share according to the above stated progressive method, in proportion to the annual premium calculated at the rate for insurance payable at death with premium for life and the age of the insured at issue of the policy, [119] and the policies of that same class which have been paid in full for their original amount, in the proportion of the twentieth part of the single premium for an insurance payable at death, as specified in the printed rates of the Company, calculated at the age of the insured at the end of the business year.

XII. ASSIGNMENTS.

The Company is to be notified of any assignment of the present policy.

XIII. PAYMENT IN THE EVENT OF DEATH.

Should the insured die during the continuance of the insurance, payment is made in the office of the Company in Berlin. The Company however, will deduct any indebtedness to it and especially, as already mentioned in Article III, any unpaid part of the premium for the current year.

Proofs of death are to be submitted on the blanks furnished by the Company for that purpose.

The Company makes payment within sixty days after receipt of proofs of death, which have to contain full information as to the cause of death and identification of the person entitled to collect the amount of insurance.

Should it be found that the age stated by the Insured in his application is not his true age, the Company will pay a sum which corresponds to the amount that the premiums actually paid would have purchased at the correct age of the insured, in accordance with the premium rates.

For the execution of the present contract, the Company designates as legal domicile the Office of its General Representative for the State in which the insurance contract was made.

For all lawsuits that may arise under this contract the Company, as defendant, submits, at the option

of the insured, either to the jurisdiction of the Courts to which its General Representative for the State in which the insurance contract was made is subject, or to the [120] jurisdiction of the Courts to which the agent, through whom the insurance was made, is subject.

XIV. STAMP DUTIES AND TAXES.

The Stamp and Registration fees for policies and other documents, the ones in existence now as well as any taxes and imposts for insurance amounts and insurance premiums that may be imposed in the future, as well as the costs for making payment under the contract are to be borne by the insured or their legal representatives.

TABLE OF LOANS, REDUCED PAID-UP INSURANCE, EXTENDED INSURANCE AND CASH SURRENDER VALUES,

To which the present policy gives the right, according to the foregoing Article VII.

At the Expiration of	Loans	Reduced Paid-up Insurance	Extended Insurance					Cash surrender Values
3 Years	M. 594	M. 1350	3 Yrs.	7	Mo.	(With	M. 0	M. 630
4 "	" 846	" 1800	5 "	8	"	cash	" 0	" 891
5 "	" 1107	" 2250	7 "	9	"	pay-	" 0	" 1170
6 "	" 1413	" 2700	9 "	7	"	ment	" 0	" 1485
7 "	" 1728	" 3150	10 "	6	"	of)	" 0	" 1818
8 "	" 2079	" 3600	11 "	3	"		" 0	" 2187
9 "	" 2466	" 4050	11 "	0	"		" 837	" 2592
10 "	" 2880	" 4500	10 "	0	"		" 1629	" 3124
11 "	" 3321	" 4950	9 "	0	"		" 2439	" 3492
12 "	" 3807	" 5400	8 "	0	"		" 3249	" 4005
13 "	" 4320	" 5850	7 "	0	"		" 4005	" 4545
14 "	" 4878	" 6300	6 "	0	"		" 4734	" 5130
15 "	" 5481	" 6750	5 "	0	"		" 5427	" 5760
16 "	" 6120	" 7200	4 "	0	"		" 6219	" 6435
17 "	" 6813	" 7650	3 "	0	"		" 6957	" 7155
18 "	" 7371	" 8100	2 "	0	"		" 7659	" 7740
19 "	" 7956	" 8550	1 "	0	"		" 8352	" 8361
20 "	"	"	"	"	"		"	"

NEW YORK LIFE
INSURANCE COMPANY.
"NEW YORK" LIFE INSURANCE COMPANY.
HOME OFFICE OF THE COMPANY
346 & 348 Broadway, New York.

Policy No. 1,554,476.
Amount M. 9,000 D. Rwg.
Insurance on the life of
Mr. Ludwig SCHNELL.
General Management for Europe:
1 & 3 Rue Le Peletier, Paris.
General Management for Prussia:
124 Leipziger Strasse, Berlin, W. [122]

EXHIBIT "C."

No. 1501882.

NEW YORK
LIFE
INSURANCE COMPANY.

Age 28 years.

Premium M 1,074.60 D. Rwg.

THE "NEW YORK" LIFE INSURANCE COMPANY BY THE PRESENT POLICY INSURES the life of Martin Loeb, residing in Stuttgart, Wurttenberg, for a period of 20 years, beginning from July 12, 1902 at noon, for the amount of 20,000 marks and the Company

Payable Yearly.

HEREBY AGREES to pay the said amount in its Office in Stuttgart to Legal Representative of insured upon the death of the above insured while this policy is in force. Furthermore, should the

The New York Life Insurance Company is a purely mutual Company with limited liability; the insured members of it cannot be called upon to make any other payments but the ones mentioned in the policy; the Security Fund of the Company as well as all Surplus of it are the exclusive property of the insured.

Revised:

death of the insured occur within the period of 20 years, counting from the date mentioned above as the beginning of the insurance, the Company agrees to pay, in addition of the above mentioned amount of insurance, an additional sum equalling ——— of the premiums paid calculated at the tabular annual rate of premiums. Or, should the insured still be living at the expiration of the insurance period, namely, on July 12, 1922, the amount of M 20,000 D. Rwg. will then be paid to the insured or his legal representative and, at the same time, the policy shall cease and determine.

THIS POLICY IS ISSUED

FIRST: On the basis of the written application made to the Company.

SECOND: In conformity with the Conditions set forth on the second and third pages of this policy of which the insured declares having received full [123] knowledge and which he acknowledges as an essential part of the present contract as though they were enumerated in detail above the signatures affixed.

THIRD: In consideration that the first ——— annual premium in the amount of 1,074.60 M. D. Rwg. has been paid to the Company and that a like payment be made in advance on 12th day of July of each year during the continuance of this policy until 20 full year's premiums have been paid.

IN WITNESS WHEREOF, the NEW YORK LIFE INSURANCE COMPANY has issued and signed the present contract through its President, its Secretary and its General Manager for Europe

or its General Secretary for Europe or its Substitute Secretary for Europe on the July 20, of the year One Thousand Nine Hundred and Two.

C Endowment Insurance for 20 years.

President:

JOHN A. McCALL.

Secretary:

Return of premiums within 20 years.

CHAS. C. WHITNEY.

General Agent for Kingdom of Wurtenberg:

20 year Accumulation of Profit Period

OTTO (Signature illegible).

Secretary for Europe,

HUNGARY.

A. TAUCHE.

The 14th day July of the year 1902 at Stuttgart.

99—322 [124]

Page 2.

SPECIAL CONDITIONS

MODES OF SETTLEMENT AT THE END OF THE ACCUMULATION OF PROFITS' PERIOD.

The present policy is issued with accumulation of profits during a period of 20 years ending on 12th of July, One Thousand Nine Hundred 22. If the insured is living on the stated day, at noon, and all premiums due have been paid in full, the Company then apportions the profits to the insured or his legal representatives, and the policy, at the same time, will then be redeemed for its total value under one of the following three Modes of Settlement:

(1) In Cash; or

(2) In form of a Life Annuity; or

(3) In form of a Paid-up Insurance without participation in profits and payable at death only; in order to enjoy this privilege, the insured must prove to the satisfaction of the Company that he is in the condition required for the issuance of such an insurance.

THE COMPANY GUARANTEES THAT THE TOTAL CASH SURRENDER VALUE OF THIS POLICY AT THE END OF THE ACCUMULATION OF PROFITS' PERIOD SHALL NOT BE LESS THAN 20,000 Mark D. Rwg. THE TOTAL CASH SURRENDER VALUE COMPRISES, IN ADDITION TO THIS GUARANTEED MINIMUM AMOUNT, THE AMOUNT OF PROFITS THEN APPORTIONED BY THE COMPANY TO THE POLICY.

If this policy is in force at the end of the Accumulation of Profits' period, the Company notifies the insured or his legal representatives of the results obtained under each of the mentioned Modes of Settlement.

Before the expiration of the Accumulation of Profits' Period, no dividends will be apportioned or paid and the Company shall not be compelled, before that time, to give any information regarding the results of the Accumulation. [125]

CASH LOANS ON SECURITY AND PLEDGING OF THIS POLICY.

If the premiums have been paid for three full years, the Company will grant loans on account

of the value of this policy. Such loans will be granted by the Company upon demand of the insured on the anniversaries of the policy, within the 30-day grace period and are subject to the conditions of the Loan Agreement in use by the Company at the time the loan is granted. The amount of the loan is left to the option of the insured on condition, however, that this amount together with any loan and interest outstanding at the time of the application for the said loan shall not exceed the maximum amount set forth in the table below. Interest at the rate of 5% per annum will be charged on the loans.

NON-FORFEITURE.

THIS POLICY IS NON-FORFEITABLE AFTER IT HAS BEEN IN LEGAL FORCE ONE FULL YEAR.

If one of the subsequent premiums remains unpaid, the policy will be converted, by endorsement, into a paid-up insurance for the corresponding reduced amount set forth in the table below. For that purpose, the insured must, within six months following the due date of the unpaid premium, make a written request to the Company and return the policy. THIS PAID-UP INSURANCE IS PAYABLE EITHER UPON THE DEATH OF THE INSURED BEFORE THE EXPIRATION OF THE ENDOWMENT PERIOD (AT DEATH OR AT SURVIVAL) OR AT SURVIVAL AT THE END OF THAT PERIOD. If the policy has not been converted in the manner

mentioned, the insurance will be considered, by rights, as extended for the amount of 20,000 Marks and for the period set forth in the table below, counting from the day to which the premium has been paid contractually. AT THE END OF THIS PERIOD, THE POLICY SHALL LOSE ITS FORCE BUT IF THE INSURED IS STILL LIVING AT THAT TIME, THE AMOUNT SET FORTH IN THE LAST COLUMN OF THE TABLE BELOW SHALL BE PAID IN CASH. The above-mentioned paid-up insurance for a reduced amount as well as the extended insurance remain subject to the conditions of the present policy, however, without [126] further payment of premiums, without right to loans, without participation in profits and without eventual return of premiums.

TABLE OF LOANS, REDUCED PAID-UP INSURANCE AND EXTENDED INSURANCE, to which the present policy gives the right provided that the premiums have been paid pursuant to the contract and that with regard to the last two columns no amount is due the Company under the policy.

	LOANS	REDUCED PAID-UP INSURANCE counting from the end of the year stated in the First Column	EXTENDED INSURANCE Counting from the end of the year stated in the First Column	(With Cash Payment of.)
1st Year	M	M	0 Years 2 Months	0
2nd "		1500	4 " 10 "	0
3rd "	M 18.60	3000	9 " 9 "	0
4th "	25.40	4000	15 " 4 "	0
5th "	33.80	5000	15 " 0 "	1940
6th "	43.20	6000	14 " 0 "	3400
7th "	51.20	7000	13 " 0 "	4820
8th "	59.80	8000	12 " 0 "	6220
9th "	68.60	9000	11 " 0 "	7580
10th "	77.60	10000	10 " 0 "	8860
11th "	87.00	11000	9 " 0 "	10100
12th "	96.80	12000	8 " 0 "	11280
13th "	107.00	13000	7 " 0 "	12400
14th "	117.60	14000	6 " 0 "	13480
15th "	128.60	15000	5 " 0 "	14520
16th "	140.00	16000	4 " 0 "	15660
17th "	151.80	17000	3 " 0 "	16800
18th "	164.20	18000	2 " 0 "	17900
19th "	177.00	19000	1 " 0 "	18960
20th "	190.40			
21st " 26th				
22nd " 27th				
23rd " 28th				
24th " 29th				
25th " 30th				

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Page 3.

GENERAL CONDITIONS.

This Policy is free from all restrictions regarding residence, occupation, travel, cause of death, time of death and place of death. In case the insured is called for military duty on land or sea in time of peace or time of war, no special permission nor payment of an extra premium is required.

INCONTESTABILITY.

This Policy is incontestable from the day of its issue.

GRACE FOR THE PAYMENT OF THE PREMIUMS.

A thirty days' grace period is granted for the payment of each premium with the exception of the first. During these thirty days the unpaid premium is considered an indebtedness to the Company which, should the death of the insured occur within the said thirty-day grace period, is to be deducted from the amount of insurance payable.

REINSTATEMENT AFTER NON-PAYMENT OF A PREMIUM.

The Policy may be reinstated provided the insured can prove to the satisfaction of the Company, within 5 years following the nonpayment of a premium and within the Accumulation of Profit Period, that he is in a condition required for the issuance of an insurance and the premiums in arrears together with interest for the delay, at the rate of 5% per annum, be paid.

POWERS OF THE AGENTS.

No agent is authorized, in the name of the Company, to make this or any other insurance contract or to modify it or to keep it from lapsing, to extend the term for the payment of a premium or to bind the Company through any promises or through the acceptance of any communications or declarations. This authority is vested exclusively in the President, the First or Second Vice-President, the Actuary and the Secretary of the Company and is delegated only to the General Manager for Europe, the General Secretary for Europe or the Substitute Secretary for Europe.

PAYMENT OF THE FIRST PREMIUM.

The present policy takes effect only after the first premium [128] has actually been paid to the Company and has been accepted by it while the insured is living and in good health.

FRACTIONAL PAYMENT OF PREMIUMS.

The premium is always to be considered as payable annually in advance. If however by agreement semi or quarter annual payments of premiums has been stipulated, the part of the year's premium that may have remained unpaid at the death of the insured will be considered an indebtedness to the Company under the contract and will be deducted from the amount of insurance due.

SUBSEQUENT PREMIUMS.

The premiums are payable at the Office of the Company at Stuttgart unless otherwise agreed in

writing. However, they may also be paid to the persons entrusted with the collection of same but always only against a receipt signed by the President, the First or Second Vice-President, the General Manager for Europe or the General Secretary for Europe.

DISCONTINUANCE OF PREMIUM PAYMENTS.

In consequence of the non-payment of a premium within 30 days after due date, the insurance shall cease by rights.

If the policy has been in force one full year, it shall be entitled to the benefits of the Non-Forfeiture Provisions set forth elsewhere; if however, it should have lapsed within the first year, these provisions do not apply to it.

If at the time of default of a premium there is an indebtedness to the Company under the Policy (if the insured wants to avail himself of the Non-Forfeiture Provisions set forth in the preceding paragraph), such indebtedness must have been repaid within the thirty days following the due date of the unpaid premium. If such repayment is not made, the Company will consider the policy as automatically forfeited and hold same ineffective by paying to the insured the then surrender value, to which he is entitled after deduction of the amount of the main debt to the Company plus interest and charges. [129]

ASSIGNMENTS.

The Company must be notified of any assignment of this Policy.

PAYMENT AFTER DEATH.

Should the insured die within the insurance period, payment will be made at the office of the Company at Stuttgart. The Company, however, will deduct any indebtedness due it and especially, as mentioned above, any part of the premium still unpaid for the current year.

The proofs must be drawn up in accordance with the blanks made available for this purpose by the Company.

The Company makes the payment within 60 days after receipt of the proofs evidencing the death and the cause of it, which proofs must also support the claims of those authorized to collect the insurance amount.

Should it be found that the age stated by the insured in the application on which this contract is based is incorrect and differs from his true age, a sum will be paid which corresponds to the amount that the premium actually paid would have purchased at the true age of the insured in accordance with the premium rates.

TAXES AND FEES.

All stamp dues and all other legal dues on policies and other documents, all taxes and dues whether existing at the present time or that may be imposed hereafter on insurance amounts or insurance premiums as also any expenses and charges which may possibly accrue in connection with the contractual

settlement, must be borne by the insured or his legal successors.

LEGAL DOMICILE.

For the performance of the present contract, the courts in Stuttgart alone are competent; as legal domicile for the Company there is stipulated its Office at Stuttgart and for the insured and the beneficiary, the place stipulated in the application for the insurance. [130]

Page 4.

ABSTRACT FROM THE APPLICATION FOR INSURANCE
to the
NEW YORK LIFE INSURANCE COMPANY.

1. Full name and surname of the person proposed for the insurance: Martin Loeb.

4 B. Born on 12 July 1874.

I, the undersigned, agree that my above statements as well as my statements to the examining physician of the Company serve as a basis for the intended contract between the Company and myself; I warrant them to be complete and true whether written by my own hand or not and relying on these declarations and answers the Policy is to be issued.

I agree that in determining the part of the profits on the Policy issued on the basis of the present application, the principles and methods adopted by the Company for such distribution be used, and I

hereby consent, in advance, for myself, as well as for any other person who shall have or claim any interest in the proposed contract to such determination of profits.

Finally, I likewise agree that I am bound to this application towards the Company for 60 days, counting from to-day and that the Company has therefore the privilege to express itself as to the acceptance or rejection of the present application within that period.

Dated 30 April, 1902.

Signature of the Applicant: MARTIN LOEB.

"NEW YORK"
LIFE INSURANCE COMPANY.

HOME OFFICE:

346 & 348, BROADWAY, NEW YORK.

General Management for Europe:
1 & 3, Rue Le Peletier, Paris.

INSURANCE ON THE LIFE

Of ————————.

————————

POLICY No. ————.

AMOUNT: ————————. [131]

EXHIBIT "D."

NEW YORK LIFE INSURANCE COMPANY.

No. 1505347

Age 27 Years

The "New York" Life Insurance Company by this policy insures the life of Mr. Hermann Kaiser Bluth, residing at Coln (Cologne), Prussia, for a period of 20 years beginning from September 24, 1902, at noon, for the amount of 30,000 Marks D. Rwg., and the Company

HEREBY OBLIGATES itself to pay said amount in its Office in Berlin to Mrs. Maria Kaiser Bluth nee Heinfeld, wife of the insured, if she survives the insured, otherwise to his legal representatives at the death of the above-named insured while this policy is in force.

Annual Premium

M.1524.30 D. Rwg.

If however, the insured survives the maturity of the insurance, that is the 24th of September, Nineteen Hundred and twenty-two, the amount of 30,000 Marks D. Rwg. will be paid to Mrs. Marie Kaiser Bluth nee Heinfeld, wife of the insured, if she survives him or his legal representatives, and this policy at the same time will cease and determine.

This policy is issued

First: On the basis of the written application made to the Company.

Second: In conformity with the General Insurance Conditions set forth on the second and third pages of this policy of which the insured declares having received full knowledge and which he acknowledges as an essential part of the present con-

tract as though they were recited at length above the affixed signatures.

Revised

Third: In consideration of the first annual premium of 1524 Marks 30 Pfennig D. Rwg. having been paid to the Company and under the assumption that a like payment be made in advance on the 24th of September of each year during the continuance of this policy until 20 [132] full year's premiums have been paid.

Fourth: With annual participation in profits, as set forth heretofore.

IN WITNESS WHEREOF the present contract has been issued by the New York Life Insurance Company and signed by its President, its Secretary and its General Manager for Europe or its General Secretary for Europe or its Substitute Secretary for Europe on the 24th day of September of the year One Thousand Nine Hundred and two.

President:

JOHN A. McCALL.

Berlin, September 27, 1902,

Endowment 20 Years

Secretary:

CHAS. C. WHITNEY.

Annual Participation in Profits

Director General for Europe:

A. TAUCHE.

Liberal Policy

Chief Representative for Prussia:

Prussia

G. NIMPTSCH.

99–504. [133]

EXHIBIT "E."

TRANSLATION.

From: German
Into: English

No. 2508291

NEW YORK LIFE
INSURANCE COMPANY.

Age 32 Years.

THE "NEW YORK" LIFE INSURANCE COMPANY BY THE PRESENT POLICY INSURES the life of Wilhelm Eduard Stadelmeyer residing in Pforzheim, Baden, Germany, for a

Premium

period of twenty-five years (25), beginning from December 7, 1903, at noon, for the amount of 10,-

M.413.10 D. Rwg.

000 Marks and the Company

HEREBY AGREES to pay the said amount in its office in Mannheim to the legal representative of the insured upon the death of the above insured while this policy is in force. Or, should the insured still be living at the expiration of the insurance period, namely on December 7, 1928, the amount of 10,000 Marks D. Rwg. will then be paid to the insured or his legal representative and, at the same time, the policy shall cease and determine.

Payable Yearly

The New York Life Insurance Company is a purely mutual Company with limited liability; the insured members of it cannot be called upon to make any other payments but the ones mentioned in the policy; the Security Fund of the Company as well as all Surplus of it are the exclusive right of the insured.

THIS POLICY IS ISSUED

FIRST: On the basis of the written application made to the Company.

SECOND: In conformity with the conditions set forth on the second and third pages of this policy of which the insured declares having received full knowledge and which he acknowledges

as an essential part of the present contract as though they were recited at length in detail above the signatures hereto affixed.

Revised.

THIRD: In consideration that the first annual premium in the amount of 413.10 Marks has been paid to the Company and that a like payment be made in advance on December Seventh of each year during the continuance of this policy until twenty-five (25) full year's premiums have been paid.

Endowment Insurance for 25 years

IN WITNESS WHEREOF, the present contract has been issued by the "New York" Life Insurance Company and signed [134] by its President, its Secretary and its General Manager for Europe or its General Secretary for Europe or its Substitute Secretary for Europe on the Seventh day of December of the year One Thousand Nine Hundred and Three.

20 year Accumulation of Profits' Period.

President:
JOHN A. McCALL.

Secretary:
CHAS C. WHITNEY.

Universal-Policy

General Director for Europe:
W. E. INGERSOLL.

HUNGARY.

Chief Representative for Germany:
G. NIMPTSCH.

Actuary for Germany:
G. BOHLMANN.

Berlin, December 7, 1903.

99–315 [135]

SPECIAL CONDITIONS.

MODES OF SETTLEMENT AT THE END OF THE ACCUMULATION OF PROFITS' PERIOD.

The present policy is issued with accumulation of profits during a period of Twenty (20) years ending on December 7, 1923. If the insured is living on the stated day, at noon, and all premiums due have been paid in full, the Company then apportions the profits to the insured or his legal representatives, and the policy, at the same time, will then be either kept in force or cancelled under one of the following six Modes of Settlement:

FIRST: The policy may be left in force and the profits withdrawn

(1) In cash; or

(2) In form of an annuity, payable in cash or applicable to the reduction of the premium; or

(3) In form of a paid-up Endowment (payable at death and at survival) additional insurance; in this case, in order to enjoy this privilege, the insured must prove to the satisfaction of the Company that he is in the condition required for the issuance of an additional insurance.

SECOND: The policy may be surrendered against receipt of its total value.

This policy surrender is regulated in one of the following ways:

(4) In cash; or

(5) in form of a Life Annuity; or

(6) in form of a paid up insurance without par-

ticipation in profits and payable at death only; in this case, in order to enjoy this privilege, the Insured must prove to the satisfaction of the Company that he is in the condition required for the issuance of such an insurance.

THE COMPANY GUARANTEES THAT THE TOTAL CASH SURRENDER VALUE OF THIS POLICY AT THE END OF THE ACCUMULATION OF PROFITS' PERIOD SHALL NOT BE LESS THAN ——— THE TOTAL CASH [136] SURRENDER VALUE COMPRISES, IN ADDITION TO THIS GUARANTEED MINIMUM AMOUNT, THE AMOUNT OF PROFITS THEN APPORTIONED BY THE COMPANY TO THE POLICY.

If this policy is in force at the end of the Accumulation of Profits' Period, the Company notifies the insured or his legal representatives of the results obtained under each of the mentioned Modes of Settlement.

If within thirty days after publication of these results the Company has not been informed of the option made, the second (2) above mentioned Mode of Settlement is considered by right as chosen and in conformity with this the profits, apportioned to the policy, are converted by the Company into an Annuity.

Before the expiration of the Accumulation of Profits' Period, no dividends will be apportioned or paid and the Company shall not be compelled, before that time, to give any information regarding the results of the Accumulation.

If the policy is kept in force after expiration of the Accumulation Period in conformity with any one of the first three above-mentioned Modes of Settlements, and if the Premiums are paid in conformity with the contract, the apportionment of profit will be made thereafter at the end of each next five-years period, and at the end of the same the policy can in conformity with any one of the six above-mentioned Modes of Settlement either be kept in force or cancelled. Moreover the insured, or his legal representative can at the end of the Accumulation Period or any one of the next five years periods, demand by means of a written request that the future profits be apportioned every year, instead of every fifth year; in this case the apportionment of profits takes place thereafter in conformity with the request expressed.

CASH LOANS ON SECURITY AND PLEDGING OF THIS POLICY.

If the Premiums have been paid for three full years, the Company [137] will grant loans on account of the value of this policy. Such loans will be granted by the Company upon demand of the insured and are subject to the conditions of the Loan Agreement in use by the Company at the time the loan is granted. The amount of the loan is left to the option of the insured on condition, however, that this amount together with any loan and interest outstanding at the time of the application for the said loan shall not exceed the maximum amount set forth in the Table below. Interest at

the rate of 5% per annum will be charged on the Loans.

NON-FORFEITURE.

THIS POLICY IS NON-FORFEITABLE AFTER IT HAS BEEN IN LEGAL FORCE ONE FULL YEAR.

If one of the subsequent premiums remains unpaid, the policy will be converted, by endorsement, into a paid-up insurance for the corresponding reduced amount set forth in the Table below. For that purpose, the insured must, within six months following the due date of the unpaid premium, make a written request to the Company and return the policy. THIS PAID-UP INSURANCE IS PAYABLE EITHER UPON THE DEATH OF THE INSURED BEFORE THE EXPIRATION OF THE ENDOWMENT PERIOD (AT DEATH OR AT SURVIVAL) OR AT SURVIVAL AT THE END OF THAT PERIOD. If the policy has not been converted in the manner mentioned, the insurance will be considered, by rights, as extended for the amount of 10,000 Marks and for the period set forth in the Table below, counting from the day to which the premium has been paid in accordance with the contract. AT THE END OF THIS PERIOD, THE POLICY SHALL LOSE ITS FORCE BUT IF THE INSURED IS STILL LIVING AT THAT TIME, THE AMOUNT SET FORTH IN THE LAST COLUMN OF THE TABLE BELOW, SHALL BE PAID IN CASH. The above-mentioned paid-up insurance for a reduced amount as well as the

extended insurance remain subject to the conditions of the present policy, however, without further payment of premiums, without right to loans, and without participation in profits. [138]

TABLE OF LOANS, REDUCED PAID-UP INSURANCE AND EXTENDED INSURANCE, to which the present policy gives the right provided that the premiums have been paid pursuant to the contract and that with regard to the last two columns no amount is due the Company under the Policy.

	LOANS.		REDUCED PAID-UP INSURANCE counting from the end of the year stated in the first column.				EXTENDED INSURANCE Counting from the end of the year stated in the first column.
							(With Cash Payment of)
1st Year	0	0	—	Years	2	Months	0
2nd "	0	600	1	"	5	"	0
3rd "	660	1200	2	"	10	"	0
4th "	900	1600	4	"	6	"	0
5th "	1220	2000	6	"	2	"	0
6th "	1570	2400	7	"	5	"	0
7th "	1860	2800	8	"	10	"	0
8th "	2170	3200	10	"	2	"	0
9th "	2490	3600	11	"	4	"	0
10th "	2820	4000	12	"	7	"	0
11th "	3160	4400	13	"	5	"	0
12th "	3510	4800	13	"	0	"	630
13th "	3870	5200	12	"	0	"	1410
14th "	4260	5600	11	"	0	"	2230
15th "	4640	6000	10	"	0	"	3020
16th "	5040	6400	9	"	0	"	3770
17th "	5470	6800	8	"	0	"	4530
18th "	5900	7200	7	"	0	"	5220
19th "	6360	7600	6	"	0	"	5920
20th "	6840	8000	5	"	0	"	6590
21st "	7320	8400	4	"	0	"	7320
22nd "	7830	8800	3	"	0	"	8040
23rd "	8370	9200	2	"	0	"	8710
24th "	8930	9600	1	"	0	"	9370
25th "	9520						

[139]

GENERAL CONDITIONS.

This Policy is free from all restrictions regarding residence, occupation, travel, cause of death, time of death and place of death. In case the insured is called for military duty on land or sea in time of peace or time of war, no special permission nor payment of an extra premium is required.

INCONTESTABILITY.

This policy is incontestable from the date of its issue.

GRACE PERIOD FOR THE PAYMENT OF THE PREMIUMS.

A thirty days' grace period is granted for the payment of each premium with the exception of the first. During these thirty days the unpaid premium is considered an indebtedness to the Company which, should the death of the insured occur within the said thirty day grace period, is to be deducted from the amount of insurance payable.

REINSTATEMENT AFTER NON-PAYMENT OF A PREMIUM.

The Policy may be reinstated provided the insured can prove to the satisfaction of the Company, within 5 years following the non-payment of a premium and within the Accumulation of Profit Period, that he is in a condition required for the issuance of an insurance and the premiums in arrears together with interest for the delay, at the rate of 5% per annum, be paid.

POWERS OF THE AGENTS.

No agent is authorized, in the name of the Company, to make this or any other insurance contract or to modify it or to keep it from lapsing, to extend the term for the payment of a premium or to bind the Company through any promises or through the

acceptance of any communications or declarations. This authority is vested exclusively in the President, the First or Second Vice-President, the Actuary and the Secretary of the Company and is delegated only to the General Manager for Europe, the General Secretary for Europe or the Substitute Secretary for Europe. [140]

PAYMENT OF THE FIRST PREMIUM.

The present policy takes effect only after the first premium has actually been paid to the Company and has been accepted by it while the insured is living and in good health.

FRACTIONAL PAYMENT OF PREMIUMS.

The premium is always to be considered as payable annually in advance. If however by agreement semi or quarter annual payment of premiums has been stipulated, the part of the year's premium that may have remained unpaid at the death of the insured will be considered an indebtedness to the Company under the contract and will be deducted from the amount of the insurance due.

SUBSEQUENT PREMIUMS.

The premiums are payable at the office of the Company at Mannheim unless otherwise agreed in writing. However they may also be paid to the persons entrusted with the collection of same but always only against a receipt signed by the President, the First or Second Vice-President, the General Manager for Europe or the General Secretary for Europe.

DISCONTINUANCE OF PREMIUM PAYMENTS.

In consequence of the non-payment of a premium within 30 days after due date, the insurance shall cease by rights.

If the policy has been in force one full year, it shall be entitled to the benefits of the Non-Forfeiture Provisions set forth elsewhere; if however, it should have lapsed within the first year, these provisions do not apply to it.

If at the time of non-payment of a premium there is an indebtedness to the Company under the Policy (if the insured wants to avail himself of the Non-Forfeiture provisions set forth in the preceding paragraph), such indebtedness must have been repaid within the thirty days following the due date of the unpaid premium. If such repayment is not made, the Company will consider the policy as automatically forfeited and hold same ineffective by paying to the insured the surrender value, to which he is entitled at that time after deduction [141] of the principal plus interest and charges.

ASSIGNMENTS.

The Company must be notified of any assignment of this Policy.

PAYMENT AFTER DEATH.

Should the insured die within the insurance period, payment will be made at the Office of the Company at Mannheim. The Company however, will deduct any indebtedness due it and especially,

as mentioned above, any part of the premium still unpaid for the current year.

The proofs must be drawn up in accordance with the blanks made available for this purpose by the Company.

The Company makes the payment within 60 days after receipt of the proofs evidencing the death and the cause of it, which proofs must also support the claims of those authorized to collect the insurance amount.

Should it be found that the age stated by the insured in the application on which this contract is based is incorrect and differs from his true age, a sum will be paid which could have been insured in accordance with the tabular rate at the true age, for the premiums actually paid.

TAXES AND FEES.

All stamp dues and all other legal dues on policies and other documents, all taxes and dues whether existing at the present time or that may be imposed hereafter on insurance amounts or insurance premiums as well as any expenses and charges which may possibly accrue in connection with all payments under contracts, must be borne by the insured or his legal representatives.

LEGAL DOMICILE.

For the performance of the present contract, the Courts in Karlsruhe alone are competent; as legal domicile for the Company at its Office at Mannheim is stipulated and for the insured and the beneficiary, the place determined in the application for insurance. [142]

ABSTRACT FROM THE APPLICATION FOR INSURANCE
to the
NEW YORK LIFE INSURANCE COMPANY.

1. Full name and surname of the person proposed for the insurance: Wilhelm Eduard Stadelmeyer.

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4. B. Born on July 31, 1871.

I, the undersigned, agree that my above statements as well as my statements to the examining physician of the Company serve as a basis for the intended contract between the Company and myself: I warrant them to be complete and true whether written by my own hand or not and relying on these declarations and answers the Policy is to be issued.

I agree that in determining the part of the profits on the Policy issued on the basis of the present application, the principles and methods adopted by the Company for such distribution be used, and I hereby consent, in advance, for myself, as well as for any other person who shall have or claim any interest in the proposed contract to such determination of profits.

Finally, I likewise agree that I am bound to this application towards the Company for 60 days, counting from today and that the Company has therefore the privilege to express itself as to the acceptance or rejection of the present application within that period.

Dated at Pforzheim, December 3, 1903.
Signature of Applicant:
WILH. STADELMEYER. [143]

"NEW YORK"
LIFE INSURANCE COMPANY.
HOME OFFICE:
346 & 348 BROADWAY, NEW YORK
General Management for Europe:
1 & 3, Rue Le Peletier, Paris.
INSURANCE ON THE LIFE
of Wilhelm Eduard Stadelmeyer

Policy No. 2508291

Amount 10,000 Marks D. Rwg.

General Management for Hungary:
9–11 Erzsebet-Korut,
Budapest. [144]

State of Oregon,
County of Multnomah,—ss.

I, R. A. Durham, being first duly sworn, depose and say:

That I am the statutory agent and attorney-in-fact in the State of Oregon for the defendant in the above-entitled action. That said defendant is a corporation organized in and having its principal office and place of business in the State of New York. I am familiar with the contents of the foregoing answer and verily believe the same to be true. That this verification is made by me for the reason

that all of the officers of the corporation are absent from and nonresidents of the State of Oregon.

R. A. DURHAM.

Subscribed and sworn to before me on this 23d day of April, 1930.

[Seal] B. S. HUNTINGTON,
Notary Public for State of Oregon.

My commission expires: Jan. 7, 1932.

Filed April 24, 1930. [145]

AND AFTERWARDS, to wit, on the 3d day of June, 1930, there was duly filed in said court a reply, in words and figures as follows, to wit: [146]

[Title of Court and Cause—Cause No. L.–10,535.]

REPLY.

Comes now the plaintiff and, for reply to the answer of defendant, admits, denies and alleges as follows:

I.

Denies each and every allegation contained in the twelve paragraphs of denials of the first cause of action, which denials are set out in pages 1 to 4, inclusive, of said answer.

II.

Denies each and every allegation contained in the twelve paragraphs of denials of the second cause of action, which denials are set out in pages 17 to 21, inclusive, of said answer.

III.

Denies each and every allegation contained in the twelve paragraphs of denials of the third cause of action, which denials are set out on pages 34 to 38, inclusive, of said answer.

IV.

Denies each and every allegation contained in the ten paragraphs of denials of the fourth cause of action, which denials are set out on pages 52 to 56, inclusive, of said answer.

V.

Denies each and every allegation contained in said answer, except such allegations thereof as are in this reply expressly admitted. [147]

And for reply to the first and separate answer and defense to the first cause of action, being that matter set out on pages 7 to 11, inclusive, of said answer, plaintiff admits and denies as follows:

I.

Denies each and every allegation contained in Paragraphs I and IV thereof.

II.

Plaintiff denies that he has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph II thereof, except that it is admitted that on February 7, 1905, defendant was authorized to transact the business of issuing the life insurance policies mentioned in the second amended complaint and in the answer.

III.

Plaintiff admits Paragraph III thereof, except that it is denied that the endowment or the profits provided for in the policy referred to in the second amended complaint and in the answer, or either of them, were payable in Germany; and denies that defendant since January 1, 1922, has been or is now authorized to do or transact business in Germany, or since said date has maintained or does now maintain an office or agent there, or since said time was or now is subject to the jurisdiction of the German Courts or other German Civil authorities.

And for reply to the second further and separate answer and defense to the first cause of action, being that matter set out on pages 12 to 16, inclusive, of said answer, plaintiff admits and denies as follows:

I.

Denies each and every allegation contained in Paragraphs I and V thereof. [148]

II.

Admits Paragraph II thereof except that it is denied that said policy was, in all or any respects, to be performed in Germany.

III.

Plaintiff denies that he has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph III thereof, except it is admitted said policy contains the provisions quoted in said Paragraph III and that at the time of the issuance of said policy defend-

ant had an office and agent at Berlin, Germany, and was then subject to the jurisdiction of the German Courts sitting therein.

IV.

Plaintiff admits the first 18 lines of Paragraph IV thereof except it is denied that since January 1, 1922, defendant has maintained or had or does now maintain or have an office or general representative or any agent whatever at Berlin, Germany, or elsewhere in Germany.

Plaintiff denies each and every allegation contained in the remainder of said Paragraph IV thereof.

And for reply to the first further and separate answer and defense to the second cause of action, being the matter set out on pages 22 to 26, inclusive, of said answer, plaintiff admits and denies as follows:

I.

Denies each and every allegation contained in Paragraphs I and IV thereof.

II.

Plaintiff denies that he has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph II thereof, except that it is admitted that on July 14, 1902, defendant was authorized to transact the business of issuing the life insurance policies mentioned in [149] the second amended complaint and in the answer.

III.

Plaintiff admits Paragraph III thereof, except

that it is denied that the endowment or profits provided for in the policy referred to in the second amended complaint and in the answer, or either of them, were payable in Germany; and denies that defendant since January 1, 1922, has been or is now authorized to do or transact business in Germany, or since said date has maintained or does now maintain an office or agent there, or since said time was or now is subject to the jurisdiction of the German Courts or other German Civil authorities.

And for reply to the second further and separate answer and defense to the second cause of action, being that matter set out on pages 27 to 31, inclusive, of said answer, plaintiff admits and denies as follows:

I.

Denies each and every allegation contained in Paragraphs I and V thereof.

II.

Admits Paragraph II thereof, except that it is denied that said policy was, in all or any respects, to be performed in Germany.

III.

Plaintiff denies that he has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph III thereof, except it is admitted that said policy contains the provision quoted in said Paragraph III.

IV.

Plaintiff admits the first 17 lines of Paragraph

IV thereof except it is denied that since January 1, 1922, defendant has maintained or had or does now maintain or have an office or general representative or any agent whatever in Germany. [150]

Plaintiff denies each and every allegation contained in the remainder of said Paragraph IV thereof.

And for reply to the third further and separate answer and defense to the second cause of action, being that matter set out on pages 32 and 33 of said answer, plaintiff admits and denies as follows:

I.

Denies each and every allegation contained in Paragraphs I and III thereof.

II.

Admits Paragraph II thereof.

And for reply to the first further and separate answer and defense to the third cause of action, being that matter set out on pages 39 to 43, inclusive, of said answer, plaintiff admits and denies as follows:

I.

Denies each and every allegation contained in Paragraphs I and IV thereof.

II.

Plaintiff denies that he has any knowledge or information as to the truth of any of the allegations contained in Paragraph II thereof, except that it is admitted that on September 27, 1902, defendant was authorized to transact the business of issuing

the life insurance policies mentioned in the second amended complaint and in the answer.

III.

Plaintiff admits Paragraph III thereof, except that it is denied that the endowment or the profits provided for in the policy referred to in the second amended complaint and in the answer, or either of them, were payable in Germany; and denies that defendant since January 1, 1922, has been or now is authorized to do or [151] transact business in Germany, or since said date has maintained or does now maintain an office or agent there, or since said time was or now is subject to the jurisdiction of the German courts or other German civil authorities. And plaintiff denies that Exhibit "D" attached to said answer is a correct translation into the English language in this:

The clause on the first page of said Exhibit "D" which in the said exhibit reads as follows:

> "If however the insured survives the maturity of the insurance, that is the 24th of September Nineteen Hundred and twenty-two; the amount of 30,000 marks D. Rwg. will be paid to Mrs. Marie Kaiser Bluth nee Heinfeld, wife of the insured, if she survives him or his legal representatives, and this policy at the same time will cease and determine,"

is incorrectly translated in that it should read if correctly translated, as follows:

> "If, however, the insured survives the maturity of the insurance, that is the 24th of Sep-

tember, 1922, the amount of 30,000 Marks D. Rwg. will be paid to Mrs. Marie Kaiser Bluth, nee Heinfeld, wife of the insured, and in case of her death then to the insured's legal representatives, and this policy at the same time will cease and determine."

And for reply to the second further and separate answer and defense to the third cause of action, being that matter set out on pages 44 to 48 inclusive of said answer, plaintiff admits and denies as follows:

I.

Denies each and every allegation contained in Paragraphs I and V thereof. [152]

II.

Admits Paragraph II thereof, except that it is denied that said policy was, in all or any respects, to be performed in Germany. And except that it is denied that Exhibit "D" is a correct translation into English of said policy. The facts respecting said incorrect translation, are as alleged in Paragraph III of the third separate cause of action in the second amended complaint, and in Paragraph III of the reply to the first further and separate answer and defense to the third cause of action.

III.

Plaintiff denies that he has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph III thereof, except that it is admitted said policy

contains the provision quoted in said Paragraph III and that at the time of the issuance of said policy defendant had an office, a general representative and an agent at Berlin, Germany, and was then subject to the jurisdiction of the German courts sitting therein.

IV.

Plaintiff admits the first 18 lines of Paragraph IV thereof except it is denied that since January 1, 1922, defendant has maintained or had or does not maintain or have an office or general representative or any agent whatever at Berlin, Germany, or elsewhere in Germany.

Plaintiff denies each and every allegation contained in the remainder of said Paragraph IV thereof.

And for reply to the third further and separate answer and defense to the third cause of action, being that matter contained on pages 49 and 50 of said answer, plaintiff admits and denies as follows:

I.

Denies each and every allegation contained in Paragraphs I [153] and III thereof.

II.

Admits Paragraph II thereof.

And for reply to the fourth further and separate answer and defense to the third cause of action, being that matter set out on page 51 of said answer, plaintiff denies each and every allegation thereof or therein contained.

And for reply to the first further and separate answer and defense to the fourth cause of action, being that matter set out on pages 57 to —— of said answer, plaintiff admits and denies as follows:

I.

Denies each and every allegation contained in Paragraphs I and IV thereof.

II.

Plaintiff denies that he has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph II thereof, except that it is admitted that on December 7, 1903, defendant was authorized to transact the business of issuing the life insurance policies mentioned in the second amended complaint and in the answer.

III.

Plaintiff admits Paragraph III thereof, except that it is denied that the endowment provided for in the policy referred to in the second amended complaint and in the answer was payable in Germany; and denies that defendant since January 1, 1922, has been or is now authorized to do or transact business in Germany, or since said date has maintained or does now maintain an office or agent there, or since said time was or now is subject to the jurisdiction of the German courts or other German civil authorities. [154]

And for reply to the second further and separate answer and defense to the fourth cause of action, being that matter set out on pages 62 to 66 inclu-

sive of said answer, plaintiff admits and denies as follows:

I.

Denies each and every allegation contained in Paragraphs I and V thereof.

II.

Admits Paragraph II thereof except that it is denied that said policy was, in all or any respects, to be performed in Germany.

III.

Plaintiff denies that he has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph III thereof, except it is admitted said policy contains the provision quoted in said Paragraph III.

IV.

Plaintiff admits the first 21 lines of Paragraph IV thereof except it is denied that since January 1, 1922, defendant has maintained or had or does now maintain or have an office or general representative or any agent whatever at Karlsruhe, Germany, or elsewhere in Germany.

Plaintiff denies each and every allegation contained in the remainder of said Paragraph IV thereof.

And for reply to the first further and separate answer and defense to each and all of the causes of action, being that matter set out on pages 67 to 76 inclusive of said answer, plaintiff admits and denies as follows.

I.

Denies each and every allegation contained in Paragraphs I and VIII thereof.

II.

Admits Paragraph II thereof. [155]

III.

Plaintiff denies that he has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraphs III, V, and VII thereof.

IV.

Admits Paragraph IV thereof except it is denied that any of said policies, other than as to the payment of death benefits was performable in Germany; and it is denied that since January 1, 1922, *has* kept or maintained an office or agent or general representatiive or any other agent whatever in Germany, or that since said date defendant has been or now is subject to be summoned into or within the jurisdiction of the courts of Germany.

V.

Plaintiff denies that he has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph VI thereof, except it is absolutely denied that the insured and beneficiaries of said policies or their assigns had or have no other right or claim save such as might be given as a matter of grace or public policy, or otherwise, by the German courts pursuant to section 242 of German Civil Code.

VI.

Denies each and every allegation contained in Paragraph IX thereof except it is admitted that section 242 of the German Civil Code provides substantially as quoted in said Paragraph IX.

And for reply to the second further and separate answer and defense to each and all of the causes of action, being that matter set out on pages 77 to 83 inclusive of said answer, plaintiff admits and denies as follows: [156]

I.

Denies each and every allegation contained in Paragraphs I and VI thereof.

II.

Plaintiff denies that he has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraphs II, III, IV and V thereof, except that it is absolutely denied that each or any of the policies of insurance in the second amended complaint or in the answer referred to is included within the alleged contracts or obligations alleged to be covered by said alleged valorization laws or said alleged decree of November 29, 1925.

And for reply to the third further and separate answer and defense to each and all of the causes of action, being that matter set out on pages 84 to 86, inclusive, of said answer, plaintiff admits and denies as follows:

I.

Denies each and every allegation contained in

Paragraphs I, II, III and IV thereof except that it is admitted that plaintiff was at all times and now is a citizen, subject and resident of Germany.

And for a further and separate reply to each of the first further and separate answers and defenses to the first, second, third and fourth causes of action, plaintiff alleges the following facts:

I.

During all the times mentioned in the second amended complaint and answer defendant was and is now a corporation organized and existing under the laws of the State of New York and by said laws it was and is now authorized to do a mutual life insurance business and during all of said times it was engaged in the mutual life insurance business. [157]

II.

Defendant's home and principal place of business is in the city of New York at which place it keeps its books, accounts, surpluses and profits as well as the major part of its assets. Its said surpluses and profits are kept in dollars and cents of the United States and not in the medium of payment of any other country.

The profits of defendant's entire business covering not only Germany, but every other country in which defendant does business, including England, Russia, France, Italy, the United States of America, Canada and elsewhere, are calculated and kept in dollars of the United States and have always been so; and are kept and figured in books and accounts located in the State of New York. And de-

fendant's said surpluses and profits are invested in values based on American dollars.

Defendant, at the time of the commencement of this action had, and ever since has continued to have and now has a large amount of assets and surpluses in American dollars in the State of Oregon.

III.

Prior to the year 1921 there was in full force and effect in the State of New York a statute known as Section 89 of Article 2 of Book 27 McKinney's Consolidated Laws of New York, a true and correct copy of which is attached hereto and marked Exhibit "X," which statute has ever since been in full force and effect and has never been amended or repealed.

IV.

During all the times mentioned in the second amended complaint and in the answer there was in full force and effect in the State of New York a law to the effect that all mutual companies were prohibited from any act or transaction which would create any discrimination between its policyholders of the same class and having the same expectancy of life whereby same would be given advantages not given to others or whereby disadvantages would be imposed on some and not upon others. [158]

V.

Defendant was admitted to transact business in Germany under and pursuant to the laws of Germany, except in Alsace-Lorraine, on August 6, 1904, to take effect on January 1, 1905, and not before.

VI.

On March 9, 1922, there was created and founded in Germany under the laws thereof, the said corporation referred to in the answer as "Kronos." In and by Article IV of the Articles of Incorporation of said Kronos it is provided as follows:

> "The company takes over the German business of the New York Life Insurance Company according to a transfer contract which is attached to and made a part of these articles."

VII.

On or about December 31, 1921, and prior to the creation of said Kronos a pretended contract was pretended to be entered into between said Kronos and defendant wherein defendant pretended to transfer to said Kronos its business in Germany and some of its policies issued to German residents and citizens, which said pretended contract was and is attached to the articles of incorporation of said Kronos. In and by Article I of said pretended contract it is provided as follows:

> "Art. I. The New York Life Insurance Company hereby transfers to the Kronos and the Kronos hereby accepts all the insurance contracts which the New York Life Insurance Company, under German laws and provisions issued upon the lives of citizens of Germany, of such persons who have their permanent domiciles there and which were still in effect of December 31, 1921, however excepting the following policies: (a) All policies which were not issued in German legal tender; (b) All poli-

cies of foreigners (including those who through territorial adjustments have become citizens of other states, for instance Poland, France, Denmark etc.) except where the owners have given their written consent to such transfer; (c) All policies of citizens of Germany who now reside outside of said country and have paid their premiums in foreign lands." [159]

VIII.

Defendant did not transfer to Kronos any part of its business done and transacted in countries other than Germany nor did it transfer to said Kronos all of its business transacted in Germany, but reserved from said pretended transfer some of its policies issued and payable in Germany to German citizens. Nor did defendant transfer or attempt to transfer to said Kronos all or any of its assets and surpluses which were then situated in countries other than Germany, and especially in the United States of America, which then amounted to and do now amount to upwards of $400,000,000.

IX.

Neither plaintiff nor the insured nor the beneficiaries named in either or any of the said policies referred to in the second amended complaint and in the answer, consented to said transfer, nor acquiesced therein nor in any way ratified or confirmed the same. Said pretended transfer is the same transfer referred to in the said first further and separate answers and defenses to the first, second, third and fourth causes of action. Neither defendant nor Kronos gave to either or any of said in-

sured or beneficiaries or plaintiff at any time any security for the payment of the demands to come due under either or any of said policies.

X.

It is the settled and established law of the Republic of Germany, announced, promulgated and declared by the courts of last resort thereof, having jurisdiction so to do, that said pretended transfer is illegal and void in that it fails to transfer all of the business of defendant in Germany, but reserves some thereof from said transfer. It is also the settled and established law of said Republic of Germany so announced, promulgated and declared that said transfer does not bind plaintiff nor discharge defendant from any of its obligations under its policy in the absence of the consent of [160] plaintiff to such transfer. It is also the settled and established law of said Republic, so announced, promulgated and declared that a transfer of policies of insurance from one company to another cannot legally be accomplished without giving to the insured security that his demand will be paid by the transferee company.

It is also the settled and established law of said Republic, so announced, promulgated, and declared that a mutual insurance company cannot legally discriminate between its members of the same class and therefore cannot transfer some of its business whereby some of its members will have less security for their demands than other members of the same class.

Said laws have never been repealed, overruled,

modified or changed in any way and are now in full force and effect.

XI.

By virtue of said laws the alleged and pretended novation and transfer of business from defendant to Kronos is illegal and void in that all of defendant's business was not transferred to Kronos nor was all of its German business so transferred, and because neither the said insureds nor beneficiaries nor plaintiff ever consented to said transfer nor was any security given them, and because its manifest purpose was and its effect, if valid, would be to create an unlawful discrimination in favor of policy-holders residing outside Germany and against policy-holders residing in Germany, contrary to the public policy of the German Republic and of the State of New York and of the United States.

And for a further and separate reply to each of the second further and separate answers and defenses to the first, second, third and fourth causes of action, plaintiff alleges the following facts: [161]

I.

The provisions quoted in Paragraphs numbered III in each of the second further and separate answers and defenses to the first, second, third and fourth causes of action, as being contained in the policies, refer to suits and actions to enforce the terms of said policies, and it was so decided in the case of Wilhelm Rinck against the defendant, which was an action to enforce the terms of the policy, and was not an action at all similar to this

one, which is an action to recover damages in American dollars for the breach of said policies, of which action the courts of Germany have no jurisdiction at all.

II.

The causes of action sued on in this action did not arise in Germany but arose in the State of Oregon, at the time of the filing of the complaint herein.

III.

The policies of insurance mentioned in the second amended complaint and in the answer contain the provisions alleged in Paragraph III of the first cause of action, and in Paragraph III of the second cause of action, and in Paragraphs III and V and VI of the third cause of action, set out in the second amended complaint and the policy mentioned in the fourth cause of action set out in the complaint contains substantially the same provisions as those alleged in said Paragraph III of the second cause of action set out in said second amended complaint. And the said policies mentioned in said second and fourth causes of action also contain the following provision:

> "The security fund of the company as well as all surplus of it are the exclusive right of the insured."

IV.

During all the time since the issuance of said policies of insurance defendant has been engaged in the business of issuing similar policies of insurance on similar terms and conditions not only in Germany but also in England, France, Italy, Sweden, Denmark, Canada, Australia and the

United States of America, [162] as well as elsewhere, and the profits to which plaintiff is entitled under his said policies are those which have accumulated from all the business done by defendant everywhere during the 20 years next succeeding the issuance of said policies.

The said profits have been kept and ascertained and calculated during all of said twenty years in books of account of all the business done by defendant, which books of account and the supporting documents, papers and data have always been kept by defendant in its home office at New York City, in the State of New York, in the United States of America.

And said profits during all of said times have been kept, ascertained, calculated, invested and reinvested in values based on the American dollar and in terms of the American dollar. And the larger part of said profits have been, during said 20 years, earned by defendant in American dollars and in values based on said American dollars.

V.

A large part of defendant's surpluses and assets at the time of the commencement of this action were, and now are, located and kept in the States of New York and of Oregon in the United States of America in American dollars.

VI.

By reason of the said provisions of said policies of insurance the intention was that defendant at the option and for the convenience of plaintiff was to submit to the jurisdiction of the particular Ger-

man courts mentioned in actions to enforce said policies, but it was not intended to compel the insured or beneficiaries or their assigns to resort only to these courts in actions wherein it is sought to proceed against the surplus and assets of defendant located in Oregon or in the United States, nor was it intended thereby to limit or restrict the insured and beneficiaries to recover only out of the defendant's [163] assets located in Germany.

VII.

Defendant is a mutual life insurance corporation organized and existing under and pursuant to the laws of the State of New York and is doing business in the State of Oregon under and pursuant to the laws thereof.

Heretofore defendant complied with the laws of the State of Oregon concerning the doing of business in Oregon by foreign corporations and it filed on the —— day of ———— with the Corporation Commissioner of said state a power of attorney, as required by said laws, which power of attorney ever since has been and now is on file in said office, a copy of which power of attorney is hereto attached and marked Exhibit "Z," and is hereby referred to for its terms and provisions.

Said power of attorney was duly executed by defendant pursuant to a resolution of its Board of Directors and was regularly acknowledged by the designated and authorized officers of defendant.

And for a further and separate reply to the third further and separate answer and defense to the

second cause of action, plaintiff alleges the following facts:

I.

The cause of action sued on in the second cause of action set out in the second amended complaint did not arise until the date of the commencement of this action.

And for a further and separate reply to the third further and separate answer and defense to the third cause of action, plaintiff alleges the following facts:

I.

The cause of action sued on in the third cause of action set out in the second amended complaint did not arise until the date of the commencement of this action.

And for a further and separate reply to the first further and separate answer and defense to each and all of the causes of action, plaintiff alleges the following facts: [164]

I.

At the times of the issuance of the four policies of insurance mentioned in the second amended complaint and in the answer the German Empire monetory system consisted of various issues of currency such as paper marks, gold marks, and metal coins, and the payments due under said policies, other than profits, were payable in legal tender of Germany, which legal tender included gold marks as well as paper marks.

On June 1, 1909, the Deutsche Reischswahrung mark was created and made legal tender, the same being an issue of paper currency, but the gold mark theretofore existing was not changed but has remained legal tender of Germany ever since the time of the issuance of said policy to the present time. [165]

In August, 1924, said Deutsche Reischswahrung mark was by legislative act of Germany discontinued as legal tender and put out of circulation and was no longer money of Germany.

II.

This action is not to recover either Deutsche Reischswahrung marks or gold marks, or any marks whatever, but is an action to recover damages in dollars for the failure of defendant to pay the cash value of said policy when due, and this cause of action did not arise in Germany, but arose in Oregon when the demand was made by the filing of the complaint.

III.

During all the times since the issuance of said policies of insurance defendant has been engaged in the business of issuing similar policies of insurance on similar terms and conditions not only in Germany, but also in England, France, Italy, Sweden, Denmark, Canada, Australia, and the United States of America, as well as elsewhere, and the profits to which plaintiff is entitled under his said policies are those which have accumulated from all the business done by defendant every-

where during the 20 years next succeeding the issuance of said policies.

IV.

The profits earned by defendant in which plaintiff is entitled to participate by virtue of said policies of insurance were earned and kept in American dollars and plaintiff is entitled to his proportionate share of said profits in American dollars.

V.

It is the settled and established law of Germany, announced and declared by its courts of the last resort, having jurisdiction so to do, which has never been repealed, overruled, modified or altered but is still in full force and effect that whether or not defendant has suffered losses by reason of the depreciation in value of the Deutsche Reischwahrung mark is immaterial because such losses are figured in [166] and accounted for in ascertaining the net profits earned by defendant; and that such losses are also immaterial and will not be considered except upon a showing of a balance sheet of all the defendant's entire business done everywhere, because such losses in Germany by reason of the depreciation in value of said mark may be compensated and equalized or even exceeded by gains and profits from its business elsewhere.

And for a further and separate reply to the second further and separate answer and defense to each and all of the causes of action, plaintiff alleges the following facts:

I.

During all the times mentioned in the amended complaint and answer defendant was and is now a corporation organized and existing under laws of the State of New York and by said laws it was and is now authorized to do a mutual life insurance business and during all of said times it was engaged in the mutual life insurance business.

II.

Defendant's home and principal place of business is in the City of New York in the State of New York at which place it keeps its books, accounts, surpluses and profits as well as the major part of its assets. Its said surpluses and profits are kept in dollars and cents of the United States and not in the medium of payment of any other country.

III.

The dividends and profits of defendant's entire business covering not only Germany, but every other country in which defendant does business, including England, Russia, France, Italy, the United States of America, Canada and elsewhere, are calculated and kept in dollars of the United States and have always been so; and are kept and figured in books and accounts located in the State of New York. And defendant's profits and surpluses are invested in values based on the American dollar. [167]

Said defendant, at the time of the commencement of this action had, and ever since has continued to have and now has a large amount of assets and

surpluses in American dollars situated in the State of Oregon.

IV.

Defendant has not surrendered or delivered to any trustee or commissioner appointed in Germany under said alleged revalorization law all of its assets and surpluses but has reserved and retained a large part thereof outside of the jurisdiction of Germany and in countries other than Germany and especially in the United States of America, in which latter country defendant has surpluses aggregating over $400,000,000, much of which was earned as profits during the 20 years immediately following the 26th day of September, 1903.

V.

Defendant has not and does not admit its liability on any of the policies referred to in the second amended complaint and answer, nor does it admit liability for a breach of the covenants and provisions thereof and by its said answer has denied all and any liability thereunder or therefor.

VI.

The cause of action sued on in this action did not arise in Germany but arose in the State of Oregon, at the time of the filing of the complaint herein.

VII.

The large part of defendant's surpluses and assets at the time of the commencement of this action were, and now are, located and kept in the States of New York and of Oregon in the United States of America in American dollars.

VIII.

For the purpose of brevity plaintiff by reference thereto incorporates herein all the allegations contained in the preceding further and separate replies. [168]

IX.

It is the settled and established law of the German Republic as announced, interpreted and declared by its courts of record and of general jurisdiction, and its courts of last resort, in decisions which have never been repealed, overruled, reversed, modified or altered in any way, but which still are in full force and effect, as follows:

(a) Said Revalorization Law has no application in a case or action brought to enforce an insurance contract, but only applies where application is made under said law for revalorization.

(b) Said Revalorization Law has no application in any case where defendant does not admit liability. Where defendant files an answer denying liability said revalorization law is not applicable.

(c) Said Revalorization Law has no application to a contract to pay accumulated profits or dividends as set forth and contained in plaintiff's said policy of insurance.

(d) Said Revalorization Law has no application to a contract which gives to the payee thereof an election as to whether he will require performance in money or in the issuance of extended insurance or in an annuity, or in any performance other than the payment of money, but applies only to contracts for the payment of a definite sum of money in German marks.

(e) Said Revalorization Law has no application except in cases where the debtor has surrendered and delivered to the commissioner or trustee, appointed under said law, and whose position and duties are similar to a trustee in bankruptcy, all of his assets, property and surpluses.

(f) Said Revalorization Law does not concern itself with the question of liability, but only with the amount admitted to be due.

(g) Whether or not the debtor has suffered losses by [169] reason of the depreciation in value of the German mark is immaterial in cases on contracts to pay accumulated profits, because such losses must necessarily be figured in and accounted for in ascertaining the profits.

(h) Whether or not the debtor has suffered losses by reason of the depreciation in value of the German mark is immaterial and will not be considered in insurance cases based on mutual policies, in the absence of a showing by the company of a balance sheet containing all of its business transactions everywhere, because its losses by depreciation of the German mark in Germany may be compensated and equalized or even exceeded by gains and profits from its business elsewhere.

And for a further and separate reply to the third further and separate answer and defense to each and all of the causes of action, plaintiff alleges the following facts:

I.

For the sake of brevity plaintiff reaffirms and realleges each and all of the facts alleged in the fore-

going further and separate replies, which are hereby referred to and made a part thereof.

II.

This court has no discretion to refuse to take jurisdiction of this cause of action, which cause of action arose in Oregon upon the filing of the complaint.

III.

One of the issues of fact is as to the existence and amount of profits and whether or not the surpluses and assets of defendant are and have been kept in American dollars, which issues can only be proved by the books and accounts of defendant which are kept in the English language and in the United States.

IV.

The said profits are payable out of the earnings and [170] assets of defendant which were earned and accumulated in American dollars and kept as such by defendant, and said profits became due in American dollars.

WHEREFORE plaintiff prays for judgment as in his second amended complaint prayed for.

(Signed) C. T. HAAS,
Attorney for Plaintiff.

State of Oregon,
County of Multnomah,—ss.

I, C. T. Haas, being first duly sworn, depose and say that I am the attorney for the plaintiff in the above-named action and that the foregoing reply is true as I verily believe. I make this verification by reason of the fact that the plaintiff is not a resi-

dent of Multnomah County, or the State of Oregon, and that the within action is based upon documents in my possession.

C. T. HAAS.

Subscribed and sworn to before me this 2d day of June, 1930.

IDA BELLE TREMAYNE,
Notary Public for Oregon.

My commission expires 7/10/32.

State of Oregon,
County of Multnomah,—ss.

Due service of the within reply is hereby accepted in Multnomah County, Oregon, this —— day of May, 1930, by receiving a copy thereof, duly certified to as such by C. T. Haas, of attorneys for plaintiff.

A. E. CLARK,
Of Attorneys for Defendants.

Filed June 3, 1930. [171]

AND AFTERWARDS, to wit, on the 7th day of June, 1930, there was duly filed in said court, a motion to dismiss cause, in words and figures as follows, to wit: [172]

[Title of Court and Cause—Cause No. L.–10,535.]

MOTION TO DISMISS.

Comes now the defendant and upon the pleadings, files and records of this case and the affidavits of Walker Buckner and Richard Kruse filed and sub-

mitted in this action in connection with this motion and the affidavits of Walker Buckner, Dr. Arthur Buchard and A. E. Clark filed with the Clerk of this court and served upon the attorney for plaintiff in support of a motion to dismiss the action wherein Henry Heine is plaintiff and the above-named defendant is defendant, pending in this court, being L.–10,465;

Moves the court for an order dismissing this action and each cause of action stated in the second amended complaint for lack of jurisdiction of the subject matter thereof, or, in the alternative, that the court in the exercise of its discretion decline to accept and retain jurisdiction of this action and dismiss the same.

HUNTINGTON, WILSON & HUNTINGTON, and

CLARK & CLARK,
Attorneys for Defendant.

State of Oregon,
County of Multnomah,—ss.

Due, timely and legal service by copy admitted at Portland, this 7th June, 1930.

C. T. HAAS,
Of Attorneys for Plaintiff.

Filed June 7, 1930. [173]

AND AFTERWARDS, to wit, on the 7th day of June, 1930, there was duly filed in said court, an affidavit of Walker Buckner, in words and figures as follows, to wit: [174]

[Title of Court and Cause—Cause No. L.–10,535.]

AFFIDAVIT OF WALKER BUCKNER.

State of New York,
County of New York,—ss.

I, Walker Buckner, being first duly sworn, upon oath depose and say:

I am the same person, who, as Walker Buckner, filed and verified on May 13, 1930, an affidavit in the cause now pending in the above-entitled court wherein Henry Heine is plaintiff and the said New York Life Insurance Company is defendant, being case number L.–10,465, and to said affidavit I now refer and reaffirm all that is therein said, and in order to avoid unnecessary repetition, by reference make the same a part of this affidavit.

What is further said in this affidavit relates more particularly to the four (4) policies involved in the above-entitled action issued by the defendant, to wit: number 1554478 to Ludwig Schnell, number 1501882 to Martin Loeb, number 1505347 to Herman-Kaiser-Bluth, and number 2508291 to Wilhelm Eduard Stadelmeyer.

I have read the answer of the defendant to the amended complaint in the above-entitled action, including [175] the exhibits thereto attached.

I have examined policy No. 1554478 issued by defendant about December 31, 1904, to Ludwig Schnell and upon which is based the first cause of action in the complaint of the plaintiff. An English translation of said policy is attached to the answer of the defendant herein as Exhibit "A." Said

policy was issued pursuant to an application in writing to defendant in Germany made by said Schnell signed by said Schnell at Breslau, Germany, and in which said applicant gave his birthplace as Strehlen, Silesia, Germany, and his place of residence at Breslau, which is also his last known place of address. The signature of G. Nimptsch, the principal attorney-in-fact and Chief Representative of defendant in Germany and the signature of defendant's secretary for Germany were the last signatures affixed to the policy and were actual signatures written upon the policy in Germany by said persons, respectively. At the time the policy was issued, W. E. Ingersoll, whose signature appears thereon, was a resident of Europe and director-general of the defendant for Europe. At that time and for many years thereafter, G. Nimptsch was the principal attorney-in-fact and Chief Representative for the defendant in Germany, and during all the time that he was such Chief Representative, he was a resident in and subject of the German Empire until it was succeeded by the Republic of Germany and thereupon continued to be a citizen and resident of said Republic. His signature was placed upon said Schnell policy at Berlin, Germany, prior to the delivery thereof to said Schnell, as was also the signature of defendant's secretary for Germany. The policy was written entirely in [176] the German language and was delivered to the insured in Germany. At the time the insured made application to the defendant for said policy and at the time said policy was issued, the insured was a resident in and subject of Germany and has

continued to the present time a citizen and resident of Germany as affiant is informed and avers and believes the fact to be.

All payments called for by the policy whether of premiums to be paid by the insured or sums to be paid to the insured or other beneficiary were payable in "Mark D. Rwg." This expression is an abbreviation for "Mark Deutscher Reichswaehrung" and translated into English reads "Mark in the currency of the German Reich." All premiums were payable at the head office of the defendant in Berlin, and all payments payable to the insured or other beneficiary under the said policy were by its terms payable at the office of the defendant in Berlin, Germany.

The policy contains a clause reading as follows:

> "For the execution of the present contract the Company designates as legal domicile the office of its General Representative for the State in which the insurance contract was made.
>
> "For all lawsuits that may arise under this contract the Company, as defendant, submits, at the option of the insured, either to the jurisdiction of the courts to which its General Representative for the State in which the insurance contract was made is subject, or to the jurisdiction of the courts to which the agent, through whom the insurance was made, is subject."

I refer to Exhibit "A" attached to the answer herein for a more particular statement of the terms and conditions of said policy.

I have examined defendant's dossier and records and data relating to the above policy. These records disclose as follows: [177]

The premiums thereupon were paid up to and including December 31, 1923, and all of said premiums were paid at defendant's offices in Germany and were paid in the currency mentioned in the policy, to wit, marks, for the nominal amount of marks therein mentioned and for that amount only. Any premiums paid thereafter by the insured were paid to or payment thereof waived by the German Insurance Company called Kronos, mentioned in the affidavit filed by me in the Heine action.

I also note from the defendant's records relating to said policy, that the insured obtained on May 10, 1918, a loan upon the policy amounting to marks 4878 and repaid this loan to the Kronos on September 6, 1922. Receipt therefor was made by the Kronos to the insured and the original policy returned by the Kronos to the insured. I also find from defendant's records and from the regular published financial and exchange quotations that an American dollar on May 10, 1918, was worth in Berlin 5.13 marks and on September 8, 1922, was worth in Berlin 1250 marks.

I also find that on November 7, 1924, the insured wrote the Kronos asking for "most favorable conditions under which you would settle my policy, and also whether a conversion into gold marks is possible, with the formalities which are to be fulfilled for this purpose." Kronos replied to the effect that no conversion into gold marks was possible and quoted terms for new insurance.

I have examined policy No. 1501862 issued by defendant about July 12, 1902, to Martin Loeb and upon which is based the second cause of action in the complaint of the plaintiff. An English translation of said policy is attached [178] to the answer of the defendant herein as Exhibit "C." Said policy was issued pursuant to an application in writing to defendant in Germany made by said Loeb signed by said Loeb at Stuttgart, Germany, and in which said applicant gave his birthplace as Stuttgart and place of residence as Stuttgart, which is also his last known place of address. The policy was issued by the defendant at Stuttgart, Germany, through the office of its General Agent for the Kingdom of Württemberg. The signature of defendant's General Agent for the Kingdom of Württemberg was the last signature affixed to the policy and was an actual signature written upon the policy in Germany. At the time the policy was issued A. Fausche, whose signature appears thereon, was a resident of Europe and secretary for Europe of defendant. At that time and for many years thereafter, defendant's aforementioned General Agent for the Kingdom of Württemberg held that position for defendant in Germany and during all the time that he held such position, he was a resident in and subject of the German Reich. His signature was placed on said Loeb policy in Germany, prior to the delivery of said policy to said Loeb. The policy was written entirely in the German language and was delivered to the insured in Germany. At the time the insured made application to the defendant for said policy and at the time said policy

was issued, the insured was a resident in and subject of Germany and has continued to the present time a citizen and resident of Germany as affiant is informed and avers and believes the fact to be.

All payments called for by the policy whether of premiums to be paid by the insured or sums to be paid to [179] the insured or other beneficiary were payable in "Mark D. Rwg." This expression is an abbreviation for "Mark Deutscher Reichswaehrung" and translated into English reads "Mark in the currency of the German Reich." All premiums were payable at the office of the defendant at Stuttgart, Germany, and all payments payable to the insured or other beneficiary under said policy were by its terms payable at the office of the defendant in Stuttgart, Germany.

The policy contains a clause headed "Legal Domicile" which reads as follows:

> "LEGAL DOMICILE: For the performance of the present contract, the courts in Stuttgart alone are competent; as legal domicile for the Company there is stipulated its office at Stuttgart and for the insured and the beneficiary the place stipulated in the application for the insurance."

I have also examined defendant's dossier, data and records relating to said Loeb policy. I find that all premiums upon said policy were paid to the maturity thereof, to wit, July 12, 1922. Defendant's records show that all of said premiums were paid at defendant's offices in Germany and were paid in the currency mentioned in the policy, to wit, marks, for the nominal amount therein men-

tioned and for that amount only. I also find from said records that prior to the maturity of the policy, to wit, July 12, 1922, the insured was notified of the different modes of settlement permitted under the policy, and that the insured chose option N providing for the conversion of the policy to a paid up policy payable only upon death and nonparticipating in the profits of the company, obligating the insured, however, to submit to a medical examination.

The insured submitted to such medical examination and was informed by the Kronos that the report thereof was [180] satisfactory. Upon the request of the Kronos, the insured on August 21, 1922, returned to the Kronos his policy with the request that the same be endorsed as a paid up policy for 53,020 marks under option N. Such endorsement was made and signed by the Kronos as of August 25, 1922, and the policy returned to the insured.

I have examined policy No. 1505347 issued by defendant about September 24, 1902, to Hermann Kaiser-Bluth, and upon which is based the third cause of action in the complaint of the plaintiff. An English translation is attached as Exhibit "D." Said policy was issued pursuant to an application in writing to defendant in Germany made by said Kaiser-Bluth at Coln (Cologne), Germany, in which said applicant gave his birthplace as Naumburg, Germany, and his place of residence at the time of said application as Coln (Cologne), Germany, which is also his last known place of address. The signature of G. Nimp-

tsch, the principal attorney-in-fact and Chief Representative of defendant in Germany was the last signature affixed to the policy and was an actual signature written upon the policy in Germany by said Nimptsch. At that time Nimptsch, whom I have previously mentioned in this affidavit, was defendant's attorney-in-fact and Chief Representative for Germany. His signature was placed upon said Kaiser-Bluth policy at Berlin, Germany, prior to the delivery thereof to said Kaiser-Bluth. The policy was written entirely in the German language and was delivered to the insured in Germany. At the time the insured made application to the defendant for said policy and at the time said policy was issued, the insured was a resident and citizen of Germany and has continued [181] to the present time a citizen and resident of Germany as affiant is informed and avers and believes the fact to be.

All payments called for by the policy, whether of premiums to be paid by the insured or sums to be paid to the insured or other beneficiary were payable in "Mark D. Rwg." This expression is an abbreviation for "Mark Deutscher Reichswaehrung" and translated into English reads "Mark in the currency of the German Reich." All premiums were payable at the head office of defendant in Berlin, Germany, and all payments payable to the insured or other beneficiary under the said policy were by its terms payable at the office of the defendant in Berlin, Germany.

The policy contains a clause reading as follows:

"For the execution of the present contract the Company designates as legal domicile the office of its General Representative for the State in which the insurance contract was made.

"For all lawsuits that may arise under this contract the Company, as defendant, submits, at the option of the insured, either to the jurisdiction of the courts to which its General Representative for the State in which the insurance contract was made is subject, or to the jurisdiction of the courts to which the agent, through whom the insurance was made, is subject."

I have also examined defendant's dossier, records and data relating to this policy. Said records disclose as follows:

All premiums upon said policy were paid up to and including the maturity thereof, to wit, September 24, 1902. All of said premiums were paid at defendant's offices in Germany and were paid in the currency mentioned in the [182] policy, to wit, marks, for the nominal amount of marks therein mentioned and for that amount only. The policy was paid in full by the Kronos on September 28, 1922, the amount of a loan (to wit, 14,000 marks) obtained on September 28, 1915, being deducted from the amount otherwise payable to the insured. The file contains a receipt given to the Kronos by the insured acknowledging receipt of the payment "in settlement of all rights and claims under the insurance contract." I find from defendant's records and the regular published financial and exchange quotations that on September 28, 1915, an American dollar was worth in Berlin 4.86 German

marks, and that on September 29, 1922, an American dollar was worth in Berlin 1630 German marks.

I have examined policy No. 2508291 issued by defendant about December 7, 1903, to Wilhelm Eduard Stadelmeyer, and upon which is based the fourth cause of action in the complaint of the plaintiff. An English translation of said policy is attached to the answer of the defendant herein as Exhibit "E." Said policy was issued pursuant to an application in writing to defendant in Germany made by said Stadelmeyer signed by said Stadelmeyer at Pforzheim, Baden, Germany, which was his place of residence at the time and is also his last known place of residence. In the application he gave his place of birth as Schwaeb Omsund, Germany. The signature of G. Nimptsch, defendant's attorney-in-fact and Chief Representative for Germany and the signature of G. Bohlmann, defendant's actuary for Germany, were the last signatures affixed to the policy and were actual signatures written on the policy in Germany by said persons repectively. At that time and for many years thereafter said G. Bohlmann was defendant's actuary for Germany and during all [183] the time that he was such actuary he was a resident in and subject of the German Reich. The signatures of said N. Nimptsch and G. Bohlmann were placed upon said policy in Berlin, Germany, prior to the delivery thereof to said Stadelmeyer. The policy was written entirely in the German language and was delivered to the insured in Germany. At the time the insured made application to the defendant for said policy and at the time said policy was issued,

the insured was a resident in and subject of Germany and has continued to the present time a citizen and resident of Germany, as affiant is informed and avers and believes the fact to be.

All payments called for by the policy whether of premiums to be paid by the insured or sums to be paid to the insured or other beneficiary were payable in "Mark D. Rwg." This expression is an abbreviation for "Mark Deutscher Reichswaerung" and translated into English reads "Mark in the currency of the German Reich." All premiums were payable at the office of the defendant at Mannheim, Germany, and all payments payable to the insured or other beneficiary of said policy were by its terms payable at the office of the defendant in Mannheim, Germany.

The policy contains a clause headed "Legal Domicile" reading as follows:

> "LEGAL DOMICILE: For the performance of the present contract, the courts in Karlsruhe alone are competent; as legal domicile for the Company there is stipulated its office at Mannheim, and for the insured and the beneficiary the place stipulated in the application for the insured."

I have examined defendant's dossier, records and data relating to said Stadelmeyer policy. Said records disclose as follows: [184]

The premiums upon said policy were paid only to December 7, 1905, upon which date default was made in the payment of premiums upon said policy. All of the premiums paid upon said policy were paid at defendant's offices in Germany and were

paid in the currency mentioned in the policy, to wit, marks, for the nominal amount of marks therein mentioned.

On February 15, 1906, upon the request of the insured, the policy was converted into a paid up policy for 600 marks without participation in profits or the right to receive loans, said sums to be payable on December 7, 1928, or upon the prior death of the insured, and an endorsement to that effect was made upon the policy. The policy with such endorsement was returned to the insured.

The four (4) policies involved in this action were included in the transfer by the defendant to "Kronos," which is referred to in my affidavit in the Heine case, and is also referred to at length in the answer of the defendant in the above-entitled action. After such transfer was made each of the insured in the said four policies dealt wholly with "Kronos."

I do not in this affidavit do more than mention the German Insurance Law of May 12, 1901, the monetary legislation of Germany prior to the outbreak of the World War, the monetary legislations of Germany following the World War of August and September, 1914, the monetary and banking Acts of August 30, 1924, the Revaluation Act of July 16, 1925, and the enforcement Decree issued thereunder on November 29, 1925, the decision of the German Insurance Board of October 25, 1928, holding that the New York Life [185] Insurance Company was a supervised company within the meaning of the Revaluation Act and the enforcement decree referred to, the decision

of the Appellate Division of February 13, 1929, affirming the decision of the German Insurance Board, and the decision of the Federal Insurance Department for Private Insurance of February 12, 1930, and the decisions of the German courts construing and applying said laws,—because they have been fully dealt with by my affidavit in the Heine case, the affidavit of Dr. Arthur Burchard made and filed in the Heine case and in the answer of the defendant in this case, to which I make reference, and it would be unnecessary repetition for me to repeat what is there said and available for the court in this case.

I am informed, believe and aver the fact to be that Paul Hermann, plaintiff in the above-entitled action, and who brings the action as alleged assignee of Schnell, Loeb, Kaiser-Bluth and Stadelmeyer is now and at all times was a citizen and resident of Germany, residing at Heidelburg.

All of the transactions relating to the policies of insurance involved in this action occurred in Germany and in the German language. There are no witnesses to any of said transactions or to any of the issues in this case, residing in Oregon. All of defendant's original data, correspondence and documents relating to defendant's business in Germany and policies issued there were kept in Germany and are still in Germany, except as request for same is made for use in connection with litigation in America upon [186] said German policies. It would impose upon the defendant great difficulty, inconvenience and unnecessary and avoidable expense if

compelled to try this case and other similar cases in the courts of Oregon.

I have read the answer to the amended complaint herein and know the contents thereof. I verily believe the allegations therein made to be true.

WALKER BUCKNER.

(Signed) WALKER BUCKNER.

Subscribed and sworn to before me this 31st day of May, 1930.

[Seal] CLARA M. SWANSON.

(Signed) CLARA M. SWANSON,
Notary Public,
Cook County, Michigan.

District of Oregon,
County of Multnomah,—ss.

Due service of the within affidavit is hereby accepted in Multnomah County, Oregon, this 7th day of June, 1930, by receiving a copy thereof, duly certified to as such by A. E. Clark, of attorneys for defendant.

C. T. HAAS,
Attorney for Plaintiff.

Filed June 7, 1930. [187]

AND AFTERWARDS, to wit, on the 9th day of June, 1930, there was duly filed in said court, a stipulation that answer to amended complaint shall stand as the answer to second amended complaint, in words and figures as follows, to wit: [188]

[Title of Court and Cause—Cause No. L.–10,535.]

STIPULATION THAT ANSWER TO AMENDED COMPLAINT SHALL STAND AS ANSWER TO SECOND AMENDED COMPLAINT.

WHEREAS, plaintiff heretofore served and filed a complaint containing four causes of action and later filed an amended complaint containing a similar number, to which amended complaint an answer was by defendant served and filed, and now plaintiff has served and filed a second amended complaint containing a like number of causes of action, it is therefore stipulated:

1. As to the first cause of action, the answer and the several separate answers and defenses (including those which refer to a single cause of action, as well as those which refer and are applicable to several causes of action) heretofore interposed to the said first cause of action contained in the amended complaint, shall stand as the answer to the first cause of action contained in the second amended complaint; that all allegations contained in the said first cause of action shall be deemed to be and shall stand as wholly denied, except as to those allegations which are identical in every respect with allegations contained in the amended complaint relating to the same subject matter and which are expressly admitted in the answer.

2. As to the second cause of action, the answer and [189] the several separate answers and de-

fenses (including those which refer to a single cause of action, as well as those which refer and are applicable to several causes of action) heretofore interposed to the second cause of action contained in the amended complaint, shall stand as the answer to the second cause of action contained in the second amended complaint; that all allegations contained in the said second cause of action shall be deemed to be and shall stand as wholly denied, except as to those allegations which are identical in every respect with allegations contained in the amended complaint relating to the same subject matter and which are expressly admitted in the answer.

3. As to the third cause of action, the answer and the several separate answers and defenses (including those which refer to a single cause of action, as well as those which refer and are applicable to several causes of action) heretofore interposed to the said third cause of action contained in the amended complaint, shall stand as the answer to the third cause of action contained in the second amended complaint; that all allegations contained in the said third cause of action shall be deemed to be and shall stand as wholly denied, except as to those allegations contained in the amended complaint relating to the same subject matter and which are expressly admitted in the answer.

4. As to the fourth cause of action, the answer and the several separate answers and defenses (including those which refer to a single cause of action, as well as those which refer and are applicable to several causes of action) heretofore interposed

to the said fourth cause of action contained in the amended complaint, shall stand as the answer to the fourth cause of action contained in the second amended complaint; that all allegations contained in the said fourth cause of action shall be deemed to be and shall stand as wholly denied, except as to those allegations which are identical in every respect [190] with allegations contained in the amended complaint relating to the same subject matter and which are expressly admitted in the answer.

IT IS FURTHER STIPULATED that the defendant may at any time hereafter, at its option, file an amended answer to said second amended complaint and each of the causes of action therein contained, the answer above referred to supplemented by this stipulation being regarded as the original answer to said second amended complaint.

Dated at Portland, Oregon, this 22d day of May, 1930.

C. T. HAAS,
Attorney for Plaintiff.
CLARK & CLARK,
HUNTINGTON, WILSON & HUNTINGTON,
Attorneys for Defendant.

Filed June 9, 1930. [191]

AND AFTERWARDS, to wit, on the 29th day of September, 1930, there was duly filed in said court, a notice by defendant that it will rely upon the record in the case of Henry Heine vs. New York Life Insurance Company on the hearing of the motion to dismiss, in words and figures as follows, to wit: [192]

[Title of Court and Cause—Cause No. L.–10,535.]

NOTICE BY DEFENDANT THAT IT WILL RELY ON RECORD IN CASE OF HENRY HEINE vs. NEW YORK LIFE INSURANCE COMPANY ON HEARING OF MOTION TO DISMISS.

Please take notice that upon a hearing of the motion to dismiss in this case the defendant will rely upon and urge in support of said motion and in addition to the pleadings, files, affidavits and records referred to in said motion, the supplemental affidavit of Dr. Arthur Burchard and the supplemental affidavit of A. E. Clark, one of the attorneys for the defendant, made and filed in the case of Henry Heine, plaintiff, against the New York Life Insurance Company, defendant, pending in this court, and being number L.–10,465.

Dated: September 25, 1930.

HUNTINGTON, WILSON & HUNTINGTON, and

CLARK & CLARK,

Attorneys for Defendant.

State of Oregon,
County of Multnomah,—ss.

Due service of the within motion is hereby accepted in Multnomah County, Oregon, this 25th day of September, 1930, by receiving a copy thereof, duly certified to as such by A. E. Clark, of attorneys for defendant.

C. T. HAAS,
Attorney for Plaintiff.

Filed September 29, 1930. [193]

AND AFTERWARDS, to wit, on Monday, the 1st day of December, 1930, the same being the 19th judicial day of the regular November term of said court,—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [194]

[Title of Court and Cause—Cause No. L.–10,535.]

ORDER SUSTAINING MOTION TO DISMISS CAUSE AND JUDGMENT.

This cause is now before the Court on motion of the defendant for an order dismissing the same and each cause of action set forth in the amended complaint for lack of jurisdiction of the subject matter thereof, or in the alternative, that the Court in the exercise of its discretion decline to retain and accept jurisdiction of the cause and dismiss the same.

Charles T. Haas and E. B. Seabrook appeared

in behalf of the plaintiff and Clark & Clark and Huntington, Wilson & Huntington appeared in behalf of the defendant.

The motion was heard on the files and records in the cause and on the affidavits of Walker Buckner and Richard Kruse filed in this cause and the affidavit and supplemental affidavit of Dr. Arthur Buchard and the affidavit and supplemental affidavit of A. E. Clark filed with the Clerk of this court in the action wherein Henry Heine is plaintiff and the above-named defendant is defendant, being cause Number L.–10,465, in support of said motion, and the affidavits of Charles T. Haas and Peter A. Schwabe filed in the said cause of Henry Heine *versus* the above-named defendant in opposition to said motion.

The Court having heard the arguments of counsel and examined the briefs submitted thereby and being advised in the premises,

IT IS ORDERED that said motion be and the same hereby allowed;

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that this cause be and the same is hereby dismissed.

Dated at Portland, Oregon, December 1, 1930.

R. S. BEAN,
Judge.

Filed December 1, 1930. [195]

AND AFTERWARDS, to wit, on the 4th day of February, 1931, there was duly filed in said court, a notice of appeal, in words and figures as follows, to wit: [196]

[Title of Court and Cause—Cause No. L.–10,535.]

NOTICE OF APPEAL.

To the Above-named Defendant and to Its Attorneys of Record:

You will please take notice and you are hereby notified that plaintiff above named appeals to the Circuit Court of Appeals of the United States for the Ninth Circuit from that certain judgment made and entered in and by the District Court of the United States for the District of Oregon in the above-entitled cause on December 1, 1930, dismissing the plaintiff's complaint and for costs and disbursement, which judgment is in favor of the above-named defendant and against the above-named plaintiff, and plaintiff so appeals from the whole and every part of said judgment.

Dated this 3d day of February, 1931.

C. T. HAAS,
E. B. SEABROOK,
Attorneys for Plaintiff.

United States of America,
State and District of Oregon,
County of Multnomah,—ss.

Due and timely and legal service by copy of the within and foregoing notice of appeal is hereby ad-

mitted at Portland, Oregon, this 3d day of February, 1931.

CLARK & CLARK,
Attorneys for Defendant.

Filed February 4, 1931. [197]

AND AFTERWARDS, to wit, on the 4th day of February, 1931, there was duly filed in said court, a petition for appeal, in words and figures as follows, to wit: [198]

[Title of Court and Cause—Cause No. L.–10,535.]

PETITION FOR APPEAL.

To the Honorable Judge of the Above-entitled Court:

The above-named plaintiff, Paul Herrmann, feeling aggrieved by the judgment rendered and entered by the above-entitled court in the above-entitled cause on the first day of December, 1930, wherein and whereby it was ordered and adjudged that the complaint of the said plaintiff be dismissed and that defendant, above named recover of and from plaintiff its costs and disbursements incurred herein, does hereby appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the assignment of errors filed herewith, and said plaintiff prays that his appeal be allowed and that citation be issued, as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenti-

cated, be sent to said United States Circuit Court of Appeals for the Ninth Circuit, sitting at the City of San Francisco, in the State of California, under the rules of such court in such cases made and provided.

And your petitioner, said plaintiff, further prays that a proper order relating to the required security to be required of him be made.

Dated at Portland, Oregon, this 3d day of February, 1931.

C. T. HAAS,
E. B. SEABROOK,
Attorneys for Said Petitioner and Plaintiff. [199]

United States of America,
State and District of Oregon,
County of Multnomah,—ss.

Due and timely and legal service by copy of the within and foregoing petition for appeal is hereby admitted at Portland, Oregon, this 3d day of February, 1931.

HUNTINGTON, WILSON & HUNTINGTON,
CLARK & CLARK,
Of Attorneys for Defendant Above Named.

Filed February 4, 1931. [200]

AND AFTERWARDS, to wit, on the 4th day of February, 1931, there was duly filed in said court, an assignment of errors, in words and figures as follows, to wit: [201]

[Title of Court and Cause—Cause No. L.–10,535.]

ASSIGNMENT OF ERRORS.

Now comes Paul Herrmann, the plaintiff in the above-entitled court and cause, and contemporaneously with the making and filing of his petition for appeal herein, files therewith the following assignment of errors upon which he will rely upon his prosecution of the appeal in the above-entitled cause, from the judgment made by this Honorable Court on the first day of December, 1930, to wit:

I.

That the United States District Court for the District of Oregon erred in refusing and failing to rule and decide that said court had jurisdiction of the said cause vested in and imposed upon it by Act of Congress.

II.

That the United States District Court for the District of Oregon erred in holding and adjudging that said court had a discretion as to whether or not it would retain jurisdiction of said cause.

III.

That the United States District Court for the District of Oregon erred in rendering and entering said judgment of the first day of December, 1930, wherein and whereby plaintiff's complaint was dismissed.

IV.

That said United States District Court for the District of Oregon erred in refusing to retain juris-

diction of said [202] cause and in refusing to try and determine the issues thereof on the merits.

WHEREFORE the above-named plaintiff and appellant prays that said judgment of the District Court of the United States for the District of Oregon rendered and entered on the first day of December, 1930, be reversed and that a mandate of this court be entered remanding this cause to said District Court of the United States for the District of Oregon with the directions to retain jurisdiction of this cause and to try and determine the issues thereof on the merits.

C. T. HAAS,
E. B. SEABROOK,
Attorneys for Plaintiff and Appellant.

United States of America,
State and District of Oregon,
County of Multnomah,—ss.

Due and timely and legal service by copy of the within and foregoing assignment of errors is hereby admitted at Portland, Oregon, this 3d day of February, 1931.

HUNTINGTON, WILSON & HUNTINGTON,
CLARK & CLARK,
Of Attorneys for Defendant Above Named.

Filed February 4, 1931. [203]

AND AFTERWARDS, to wit, on Wednesday, the 4th day of February, 1931, the same being the 64th judicial day of the regular November term of said court,—Present, the Honorable JOHN H. McNARY, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [204]

[Title of Court and Cause—Cause No. L.-10,535.]

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF BOND ON APPEAL.

On motion of E. B. Seabrook, one of the attorneys and of counsel for the plaintiff above named, IT IS HEREBY ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment heretofore filed and entered herein on December 1, 1930, be and the same hereby is allowed, and that a transcript of the record and of all the proceedings and documents upon which said judgment was based, duly certified and authenticated, as provided by law, be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that the bond on appeal be and the same hereby is fixed at the sum of $1,000.00.

Dated this 4th day of February, 1931.

JOHN H. McNARY,
District Judge.

Filed February 4, 1931. [205]

AND AFTERWARDS, to wit, on the 6th day of February, 1931, there was duly filed in said court, a bond on appeal, in words and figures as follows, to wit: [206]

[Title of Court and Cause—Cause No. L.–10,535.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, Paul Herrmann, by his attorney, as principal, and Metropolitan Casualty Insurance Company of New York, a surety company duly authorized and licensed under the laws of Oregon, as surety, are held and firmly bound unto the above-named New York Life Insurance Company, the defendant in the above-entitled court and cause in the sum of $1,000.00, lawful money of the United States, to be paid to it and its respective successors or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, personal representatives, successors and assigns by these presents.

Sealed with our seals and dated this 4th day of February, 1931.

WHEREAS, the above-named Paul Herrmann, the plaintiff in the above-entitled court and cause, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment of the District Court of the United States for the District of Oregon, rendered and entered in the above-entitled cause on December 1, 1930,—

NOW, THEREFORE, the condition of this obligation is such that if the above-named Paul Herrmann, plaintiff herein, shall prosecute his said appeal to effect and answer all damages and costs if he fails to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

PAUL HERRMANN.
By C. T. HAAS, (Seal)
His Attorney of Record,
Principal.

METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK.
By HERBERT F. WESTENFELDER,
Attorney-in-fact,
Surety.

[Seal of the Surety Company.] [207]

United States of America,
State and District of Oregon,
County of Multnomah,—ss.

Due and timely and legal service by copy of the within and foregoing bond on appeal is hereby admitted at Portland, Oregon, this 6th day of February, 1931.

CLARK & CLARK,
Of Attorneys for Defendant Above Named.

The foregoing bond is approved both as to sufficiency and form this 6th day of February, 1931.

JOHN H. McNARY,
District Judge.

Filed February 6, 1931. [208]

AND AFTERWARDS, to wit, on the 9th day of February, 1931, there was duly filed in said court, a praecipe of plaintiff for transcript in words and figures as follows, to wit: [209]

[Title of Court and Cause—Cause No. L.–10,535.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You are hereby directed to please prepare and certify the record in the above cause for transmission to the United States Circuit Court of Appeals for the Ninth Circuit, including therein a certified copy of all papers filed and proceedings had in the above-entitled cause, which are necessary to a determination thereof in said appellate court and especially including therein the following documents:

1. Petition for removal from state court.
2. Order of removal from state court.
3. Certificate of Clerk of state court.
4. Exhibits "A," "C," "D," and "E," attached to defendant's answer.
5. Second amended complaint.
6. Motion to dismiss.
7. Order dismissing action.
8. Notice of appeal.
9. Petition for appeal.
10. Assignment of errors.
11. Order allowing appeal.
12. Bond on appeal.
13. Citation.
14. This praecipe.

Omit all other papers and documents because they are unnecessary and immaterial to the question presented on appeal. [210]

Dated this 7th day of February, 1931.

C. T. HAAS,
E. B. SEABROOK,
Attorneys for Plaintiff.

United States of America,
State and District of Oregon,
County of Multnomah,—ss.

Due and timely and legal service by copy of the within and foregoing praecipe for transcript of record is hereby admitted at Portland, Oregon, this 9th day of February, 1931.

CLARK & CLARK,
Attorneys for Defendant.

Filed February 9, 1931. [211]

AND AFTERWARDS, to wit, on the 10th day of February, 1931, there was duly filed in said court, a praecipe of defendant for transcript, in words and figures as follows, to wit: [212]

[Title of Court and Cause—Cause No. L.–10,535.]

PRAECIPE OF DEFENDANT FOR ADDITIONAL TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You are hereby requested and directed to prepare, certify and include in the record in the above-entitled cause for transmission to the United States Circuit Court of Appeals for the Ninth Circuit, and

in addition to the papers and proceedings specified in the praecipe served and filed by the plaintiff, a certified copy of the following papers, documents and proceedings in said cause which are necessary to a consideration and determination of the cause in said appellate court, to wit:

1. The answer of the defendant to the amended complaint of the plaintiff herein omitted therefrom, and for the reasons hereinafter stated, the following:

(a) Exhibits "A," "C," "D" and "E" attached to said answer, being copies of the insurance policies upon which the several causes of action are based, for the reason that said exhibits are enumerated in the praecipe for transcript of record served and filed by plaintiff; and [213]

(b) Exhibit "B" attached to the answer of the defendant to the amended complaint herein for the reason that the same is identical with Exhibit 2 attached to the answer in the case of Henry Heine *versus* the above-named defendant, being number L.–10,465 pending in the above-entitled court, which was heard at the same time as this case;

(c) Exhibit "F" attached to said answer for the reason that the same is identical with Exhibit "D" attached to the affidavit of Dr. Arthur Burchard filed in the said Heine case;

(d) Exhibit "G" attached to said answer for the reason that it is identical with Exhibit "E" attached to said affidavit of Dr. Arthur Burchard;

(e) Exhibit "H" attached to said answer for the reason that it is identical with Exhibit "R" attached to said affidavit of Dr. Arthur Burchard;

(f) Exhibit "I" attached to said answer for the reason that it is identical with Exhibit "I" attached to said affidavit of Dr. Arthur Burchard;

(g) Exhibit "J" attached to said answer for the reason that it is identical with Exhibit "J" attached to said affidavit of Dr. Arthur Burchard;

(h) Exhibit "K" attached to said answer for the reason that it is identical with Exhibit "K" attached to said affidavit of Dr. Arthur Burchard.

(i) Exhibit "L" attached to said answer for the reason that it is identical with Exhibit "L" attached to said affidavit of Dr. Arthur Burchard; [214]

(j) Exhibit "M" attached to said answer for the reason that it is identical with Exhibit "M" attached to said affidavit of Dr. Arthur Burchard;

(k) Exhibit "N" attached to said answer for the reason that it is identical with Exhibit "T" attached to said affidavit of Dr. Arthur Burchard;

(l) Exhibit "O" attached to said answer for the reason that it is identical with Exhibit "A" attached to the affidavit of Walker Buckner filed in said Heine case.

2. Stipulation that answer to amended complaint should stand as answer to second amended complaint.

3. Reply to the answer of the defendant.

4. Affidavit of Walker Buckner filed in the above-entitled cause.

5. Notice dated September 25, 1930, signed by attorneys for the defendant giving notice to the attorneys for the plaintiff that in addition to the pleadings, files and records referred to in the mo-

tion to dismiss, the defendant would further rely upon the supplemental affidavits of Dr. Arthur Burchard and the supplemental affidavit of A. E. Clark made and filed in the aforesaid case of Henry Heine against the above-named defendant.

6. This praecipe.

That all of the foregoing papers, records and proceedings, in addition to those specified in the praecipe of the plaintiff, constitute the material record upon which the decision and judgment of the above-entitled court, from which an appeal is taken, were based.

The affidavit of Richard Kruse is omitted for the reason that it is made up of copies of the policies upon which the several causes of action contained in the second [215] amended complaint are based, and recitals that they are true copies of the policies, and copies of said policies are attached to the answer as Exhibits "A," "C," "D," and "E."

Dated February 9, 1931.

CLARK & CLARK,
HUNTINGTON, WILSON & HUNTINGTON,
Attorneys for Defendant.

State of Oregon,
County of Multnomah,—ss.

Due service of the within praecipe is hereby accepted in Multnomah County, this 10th day of February, 1931, by receiving a copy thereof, duly certified to as such by W. M. Huntington, of attorneys for defendant.

C. T. HAAS,
Attorney for Plaintiff.

Filed February 10, 1931. [216]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages, numbered from 2 to 216, inclusive, constitute the transcript of record upon the appeal in a cause in said court, in which Paul Herrmann is plaintiff and appellant, and New York Life Insurance Company is defendant and appellee; that the said transcript has been prepared by me in accordance with the praecipe for transcript filed by said appellant and the praecipe for transcript filed by the said appellee, and is a full, true and complete transcript of the record and proceedings had in said court in said cause, in accordance with the said praecipe as the same appear of record and on file at my office and in my custody.

I further certify that the cost of the foregoing transcript is $33.45, and that the said appellant has paid $12.15 for the portion of the transcript requested by his praecipe for transcript, and that the appellee has paid the sum of $21.30 for the portion of the transcript requested by its praecipe for transcript.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court, at Portland, in said District, this 11th day of March, 1931.

[Seal] G. H. MARSH,
Clerk. [217]

[Endorsed]: No. 6406. United States Circuit Court of Appeals for the Ninth Circuit. Paul Herrmann, Appellant, vs. New York Life Insurance Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Oregon.

Filed March 14, 1931.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the Circuit Court of Appeals of the United States, for the Ninth Circuit.

PAUL HERRMANN,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY, a Corporation,

Defendant.

DESIGNATION OF APPELLANT OF PARTS OF RECORD TO BE PRINTED.

To the Clerk of the Above-entitled Court:

Appellant, pursuant to Rule No. 23, of the above-entitled court, does hereby make the statement that in the prosecution of the appeal of this cause he intends to rely only upon the following errors, which are set forth in the assignment of errors, to wit:

I.

That the United States District Court for the

District of Oregon erred in refusing and failing to rule and decide that said court had jurisdiction of the said cause vested in and imposed upon it by Act of Congress.

II.

That the United States District Court for the District of Oregon erred in holding and adjudging that said court had a discretion as to whether or not it would retain jurisdiction of said cause.

III.

That the United States District Court for the District of Oregon erred in rendering and entering said judgment on the first day of December, 1930, wherein and whereby plaintiff's complaint was dismissed.

IV.

That said United States District Court for the District of Oregon erred in refusing to retain jurisdiction of said cause and in refusing to try and determine the issues thereof on its merits.

The only legal propositions to be presented by appellant in the appeal are that the said District Court had jurisdiction of the cause vested in it by Act of Congress and was in duty bound to retain jurisdiction; had no discretion whatever as to whether or not it would retain such jurisdiction. And appellant does not raise any question whatever as to the proper exercise by said court of its discretion, in the event it had a discretion in the matter.

Inasmuch as the questions presented by appellant on appeal must necessarily be determined from the complaint and petition for removal, we request that

the following parts of the record only, and no others, be printed in the transcript of record, to wit:

(1) Petition for removal.
(2) Exhibits "A," "C," "D" and "E," attached to answer.
(3) Second amended complaint.
(4) Motion to dismiss.
(5) Judgment order dismissing action.
(6) Petition for appeal.
(7) Assignment of errors.
(8) Order allowing appeal.
(9) Bond on appeal.
(10) Citation on appeal.
(11) Praecipe for record.
Clerk's certificate.

Please omit from the printed transcript of record all other parts of the record because they are immaterial and unnecessary to a determination of the only questions presented in the appeal.

C. T. HAAS,
E. B. SEABROOK,
Attorneys for Appellant.

United States of America,
State and District of Oregon,
County of Multnomah,—ss.

Due and timely service by copy of the foregoing document is admitted on this 11th day of March, 1931, at Portland, Oregon.

A. E. CLARK,
By MISS MAPLE,
Stenog.
Attorneys for Defendant.

[Endorsed]: Filed Mar. 14, 1931. Paul P. O'Brien, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

No. 6406.

PAUL HERRMANN,
Plaintiff and Appellant,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation,
Defendant and Appellee.

DESIGNATION OF APPELLEE OF ADDITIONAL PARTS OF RECORD TO BE PRINTED.

To Hon. PAUL P. O'BRIEN, Clerk of the Above-entitled Court:

The appellee, pursuant to Rule No. 23 of this court, hereby requests that the following parts of the record be printed in this cause, in addition to the parts of the record designated by the appellant, which the appellee deems essential, material and necessary for the consideration of this cause upon appeal:

(1) All of the papers, documents and proceedings specified in appellee's praecipe for transcript (Transcript p. 212), being more particularly enumerated as follows:

(a) Answer of defendant (appellee) to amended complaint (Transcript, p. 26), omitting therefrom

Exhibits "A" to "O," inclusive, for the reason stated in appellee's praecipe for transcript.

(b) Stipulation that answer to amended complaint shall stand as answer to second amended complaint (Transcript, p. 188).

(c) Reply to answer (Transcript, p. 146).

(d) Affidavit of Walker Buckner (Transcript, p. 174).

(e) Notice by attorneys for defendant to attorneys for plaintiff, dated September 25, 1930, that in addition to pleadings, affidavits, etc., in this cause, defendant would rely upon the record in the case of Henry Heine vs. New York Life Insurance Company (Transcript, p. 192).

(f) Praecipe of defendant (appellee) for transcript of record on appeal (Transcript, p. 212).

Dated March 15, 1931.

B. S. HUNTINGTON,
W. M. HUNTINGTON,
ALFRED E. CLARK,
MALCOLM H. CLARK,
Attorneys for Defendant and Appellee.

United States of America,
State and District of Oregon,
County of Multnomah,—ss.

Due and legal service of the foregoing by receipt of a certified copy thereof, at Portland, Oregon, on this 17th day of March, 1931, is hereby admitted.

SEABROOK & SEABROOK,
Attorneys for Plaintiff and Appellant.

[Endorsed]: Filed Mar. 19, 1931. Paul P. O'Brien, Clerk.